

THIS PRINT COVERS CALENDAR ITEM NO. 13

**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
City and County of San Francisco**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO to advertise a Request for Proposals for Advertising on San Francisco Municipal Transportation Agency Property.

SUMMARY:

- In 2004, the City entered into a Transit Advertising Agreement for transit vehicles with a term of five years. The Agreement expires on June 30, 2009.
- Under the proposed contract, the contractor will have the right to advertise on a wide range of properties owned or licensed by the SFMTA, including vehicles and parking garages but not including the structures covered by the City's Transit Shelter Advertising Agreement, and will provide related infrastructure.
- The contractor will pay the SFMTA the greater of (i) a percentage of its gross revenues from advertising under the contract, or (ii) a Minimum Annual Guarantee (MAG).
- Under the proposed agreement the SFMTA and the winning firm will enter into a 10-year contract, which will also include options to extend the contract for two additional five-year terms.
- The contractor will also pay the SFMTA annual administrative and marketing fees, as well as provide broadcast media support.
- The proposed contract shall include an option for the SFMTA to include advertising in the new Central Subway stations and tunnel after their completion.

ENCLOSURES:

1. Resolution
2. RFP, Sample Contract and Other Exhibits
3. List of Potential Bidders

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION Gail Stein
BE RETURNED TO

ASSIGNED MTAB CALENDAR DATE: _____

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EXPLANATION:

Background

The City and Viacom Outdoor Group Inc. entered into the current Transit Advertising Agreement for transit vehicles ("Agreement") effective as of July 1, 2004. The Agreement has a term of five years. Since the execution of the Agreement, Viacom Outdoor Group Inc. has changed its name to CBS Outdoor. The Agreement expires on June 30, 2009.

Major Provisions of the RFP and Sample Contract (Enclosure 2)

The RFP was developed after reviewing similar contracts in various cities, including New York, Chicago, Washington, D.C., Los Angeles and Atlanta. Additionally, other City departments have reviewed the RFP, including the Planning Department and the Recreation and Park Department.

Major provisions of the RFP and sample contract are outlined below:

Term

- The contract will be for a term of ten years, plus two five-year options to extend the contract in the SFMTA's sole discretion.

Rights Granted

- The contractor will have the right to advertise on a wide range of properties owned or licensed by the SFMTA (not including the structures covered by the City's Transit Shelter Advertising Agreement with Clear Channel Outdoor, Inc.) and will provide related infrastructure.
- The contract will also allow the contractor to advertise on property under the jurisdiction of other public entities (e.g., the Department of Recreation and Park), subject to an authorizing agreement between the SFMTA and the public entity.

Description of Included Property

- The following SFMTA property is included in the RFP and may be included in the contract: transit vehicles, parking garages, Twin Peaks Tunnel and SFMTA facilities, fare and parking media, signage, information kiosks and other.

Quality of Advertising

- The contractor will be required to comply with the provisions of the SFMTA Advertising Policy.

Maintenance Responsibilities

- The contractor will be required to maintain the advertisements that it installs and any infrastructure that supports such advertisements.

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Revenue; Payments

- The contractor will pay the SFMTA the greater of (i) a percentage of its gross revenues from advertising under the contract, or (ii) a Minimum Annual Guarantee (MAG) of revenue starting at \$10,000,000 for the first year of the contract, escalated by 3.5% per year and increased at year 6 and (if the first option is exercised by the SFMTA) year 11 and (if the second option is exercised by the SFMTA) year 16.
- The contractor will also pay the SFMTA an annual administrative fee of \$500,000, annual marketing support of \$250,000, plus \$400,000 in media and/or services, and these will escalate annually according to the CPI of the Bay Area.

Central Subway Option

- The contract will include an option for the City to include advertising in the new Central Subway stations and tunnel after their completion.

Performance Requirements and Security

- The contract includes various performance related requirements and provides for financial consequences if these are not met. Listed below are some of these provisions:
 - Failure to provide an acceptable level of services will result in assessment of liquidated damages ranging from \$500/day to \$5,000/day, depending on the nature and severity of the failure;
 - A performance bond of \$7,000,000 for the first 10 years of the contract, increased to \$10,000,000 for the duration of the contract if the options to extend the contract term are exercised; and
 - A \$3,000,000 letter of credit for the first 10 years of the contract, increased to \$5,000,000 for the duration of the contract if the options to extend the contract term are exercised.

Termination

- The SFMTA may terminate the contract for default or convenience. The SFMTA may also partially terminate advertising rights with respect to any advertising space that is not sold by the contractor over a period of 60 days unless the contractor actually sells the space within 60 days following the SFMTA's notice of intent to partially terminate the contract.

Minimum Requirements for Proposers

- The proposer, its key management team, and each of its subcontractors must have at least three years experience in selling advertising on transit vehicles and/or other transit property in major metropolitan markets;
- The proposer must have had advertising contracts worth over \$10,000,000 per year for each of the last three years;
- The proposer must have had a corporate net worth of at least \$25,000,000 for the last three years.

Selection Process

- The selection of the winning bidder will be based on the following criteria. Each proposer may earn up to a maximum of 100 points:
 - Experience and Qualifications—20 points
 - Quality of the Proposal—30 points

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- Offer of Compensation—50 points (must meet minimum MAG to be considered responsive, highest offer gets 50 points, lower offers receive proportional number of points).
- The final contract will require approval by the SFMTA Board of Directors and the Board of Supervisors.
- The successful proposer shall work with the SFMTA in meeting its commitments and objectives regarding nondiscrimination and equal employment in the award and administration of this project, and shall ensure that barriers do not exist for the participation of Small, Local and Disadvantaged Business Enterprises.

List of Bidders; Communications Prior to Contract Award and SFMTA Contact Person

Attached in Enclosure 3 is the list of firms to whom the SFMTA will send the RFP.

It is the policy of the SFMTA that only employees identified in the RFP as contacts for this competitive solicitation are authorized to respond to comments or inquiries from proposers or potential proposers seeking to influence the contractor selection process or the award of the contract. This prohibition extends from the date the RFP is issued until the date when the contractor selection is finally approved by the SFMTA Board of Directors and, if required, by the San Francisco Board of Supervisors.

All firms and subcontractor(s) responding to this RFP are notified that they may not contact any SFMTA staff member, other than the person with whom contact is expressly authorized by this RFP -- Jason Gallegos-- for the purpose of influencing the contractor selection process or the award of the contract from the date the RFP is issued to the date when the contract award is approved by the Board of Directors of SFMTA and the Parking Authority Commission and, if required, by the San Francisco Board of Supervisors. This prohibition does not apply to communications with SFMTA staff members regarding normal City business not regarding or related to this RFP.

STRATEGIC PLAN GOALS:

This item will meet the following goals of the SFMTA Strategic Plan:

- Goal 4, Financial Capacity: To ensure financial stability and effective resource utilization.
 - 4.1 Increase revenue by 20% or more by 2012 by improving collections and identifying new sources.
 - 4.2 Ensure efficient and effective use of resources.

RECOMMENDATION:

The City Attorney's Office and the Contract Compliance Office have reviewed this Calendar Item, RFP and contract. Staff recommends that the SFMTA Board authorize the issuance of a Request for Proposals for Advertising on San Francisco Municipal Transportation Agency Property.

MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION No. _____

WHEREAS, The current Transit Advertising Agreement for transit vehicles is due to expire on June 30, 2009; and

WHEREAS, The SFMTA has prepared a draft Request for Proposals for a new contract for advertising on San Francisco Municipal Transportation Agency Property, including transit vehicles, for a term of 10 years, plus two five-year options to extend the contract at the SFMTA's election; and

WHEREAS, Under the new contract, the contractor will have the right to advertise on a wide range of properties owned or licensed by the SFMTA (not including the structures covered by the City's Transit Shelter Advertising Agreement with Clear Channel Outdoor, Inc.) and will provide related infrastructure; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to advertise a Request for Proposals for a new contract for Advertising on San Francisco Municipal Transportation Agency Property, on substantially the same terms as presented to this Board of Directors.

I certify that the foregoing resolution was adopted by the Municipal Transportation Agency Board of Directors at its meeting of _____.

Secretary, Municipal Transportation Agency Board

Enclosure 2—RFP, Contract and Other Exhibits

**San Francisco Municipal Transportation Agency
City and County of San Francisco**

Request for Proposals for

Advertising on San Francisco Municipal Transportation Agency Property



San Francisco Municipal Transportation Agency

Date issued:	August 22, 2008
Pre-proposal conference:	September 15, 2008, 10:00AM
Proposal due:	October 16, 2008, 4:00PM

RFP for Advertising on San Francisco Municipal Transportation Agency Property

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Appendices:

1. Standard Forms
 - A. Nondiscrimination Requirements
 - SFMTA Form 1 – DBE/LBE/SBE Participation Report
 - SFMTA Questionnaire – Nondiscrimination Requirements
 - SFMTA Questionnaire on Recruitment, Hiring and Training Practices for Consultants
 - Workforce Data Spreadsheet #1
 - Workforce Data Spreadsheet #2
 - B. Standard Forms: Listing and Internet addresses of Forms related to Taxpayer Identification Number and Certification, to Business Tax Declaration, and to Chapters 12B and 12C, and 14B of the S.F. Administrative Code.
 - C. Lists of Included SFMTA Property
 - D. Documents that may include Restrictions on the Sale of Advertising on SFMTA Property
 - E. Contract Terms and Conditions
 - F. Attestation of Compliance
 - G. Certification Regarding Debarment, Suspension, and Other Responsibility Matters
 - H. Certification Regarding Lobbying

RFP for Advertising on San Francisco Municipal Transportation Agency Property**I. Introduction and Schedule****A. Introduction**

The San Francisco Municipal Transportation Agency (“SFMTA”), a department of the City and County of San Francisco (“City”), which manages the San Francisco Municipal Railway and the Department of Parking and Traffic, is requesting proposals from qualified firms to advertise, on an exclusive basis during the term of this contract, on a wide range of properties owned or licensed by the SFMTA and to provide related infrastructure.

The following SFMTA property is included in this contract: transit vehicles (see Appendix C-1), parking garages (see Appendix C-2), Twin Peaks Tunnel and SFMTA facilities (see Appendix C-3), fare and parking media (see Appendix C-4), signage (see Appendix C-5), information kiosks (see Appendix C-6) and other property (see Appendix C-7). These properties include both existing advertising venues and venues that do not currently display advertising. Property that is subject to advertising rights under this contract may change over its term. For example, in the future the Central Subway stations and tunnel may be added to the list of SFMTA facilities. Certain City and SFMTA policies and existing contracts impose restrictions on advertising on SFMTA property, as described below.

The contract shall be for a term of ten years, commencing on July 1, 2009. There will be two five-year options to extend the contract in the SFMTA’s sole discretion.

B. Schedule

The anticipated schedule for selecting a contractor is listed below. The SFMTA reserves the right to change the schedule at any time.

<u>Proposal Phase</u>	<u>Date</u>
RFP issued by the City	August 22, 2008
Pre-proposal conference and site tour	September 15, 2008
Deadline for submission of written questions or requests for clarification	September 30, 2008
Proposals due	October 16, 2008
Oral interviews	Week of October 27, 2008
Negotiations with selected firm	December 2008-February 2009
SFMTA Board/Parking Authority Commission approval of contract	March 2009
Board of Supervisors approval of contract	May 2009

RFP for Advertising on San Francisco Municipal Transportation Agency Property**II. Scope of Work**

The contractor will have the right to advertise, on an exclusive basis during the term of this contract, on a wide range of properties owned or licensed by the SFMTA (not including the structures covered by the Transit Shelter Agreement; see Appendix D-1) and to provide related infrastructure necessary to display the advertising, such as kiosks, signage and advertising boards.

The following SFMTA property is included in this contract: transit vehicles (see Appendix C-1), parking garages (see Appendix C-2), Twin Peaks Tunnel and SFMTA facilities (see Appendix C-3), fare and parking media (see Appendix C-4), signage (see Appendix C-5), information kiosks (see Appendix C-6) and other property (see Appendix C-7). These properties include both existing advertising venues and venues that do not currently display advertising. Property that is subject to advertising rights under this contract may change over its term. For example, the Central Subway stations and tunnel may be added to the list of SFMTA facilities in the future. In addition, certain City and SFMTA policies and existing contracts impose restrictions on advertising on SFMTA property, as described below.

In exchange for this exclusive right to sell advertising on SFMTA property, the contractor will be responsible for the following payments to the SFMTA (see Section III(D)(4) below and Appendix E, Section 6 ("Payments") for more detailed information):

1. The greater of (i) a Minimum Annual Guarantee ("MAG") in an amount to be proposed in the contractor's response to this RFP or (ii) a percentage of contractor's annual gross revenues earned in connection with the rights to advertise provided in the contract; and
2. An annual fee for administration of the contract; and
3. Annual financial support for SFMTA's marketing and other creative services needs.

In addition, the contractor must provide all products and services included in this contract, including costs for related infrastructure, at no cost to the SFMTA. The contractor shall be responsible for installing, replacing and maintaining all frames, display equipment, decal adhesive materials and other advertising materials and advertising infrastructure for the term of this contract.

The following City, SFMTA and other policies and contracts impose restrictions on advertising on SFMTA property: the Transit Shelter Agreement (see Appendix D-1), the SFMTA Advertising Policy (see Appendix D-2) and the SFMTA's First Supplemental Muni/BART Joint Station Maintenance Agreement dated July 1, 1986 with the San Francisco Bay Area Rapid Transit District (BART) and the Professional Services Agreement dated as of June 12, 2008 between BART and Titan Outdoor LLC (see Appendix D-3). Proposers should review these documents before submitting their proposals.

All SFMTA transit vehicles may be wrapped as long as side windows are not covered. The SFMTA currently does not have a policy on wrapping side windows of transit vehicles. The SFMTA may implement such a policy during the term of this contract.

RFP for Advertising on San Francisco Municipal Transportation Agency Property

The SFMTA encourages firms to enter into joint ventures, as needed, in order to provide proposals that cover all or most of the locations for advertising on SFMTA property set forth in Appendices C-1 through C-7. Each advertising firm making up a joint venture must contribute a separate response to Section III.D.3.a of this RFP to the joint venture's proposal.

The SFMTA encourages proposals that include creative ideas for enhancing revenue from all SFMTA property.

The contract shall be for a term of ten years, commencing on July 1, 2009. There will be two five-year options to extend the contract in the SFMTA's sole discretion.

This scope of work is a general guide and is not intended to be a complete list of all work required under the contract. Respondents to this RFP should review the attached Contract Terms and Conditions (Appendix E) for more details on the requirements of the contract. The contractor will be required to execute a contract substantially similar to Appendix E.

III. Submission Requirements

A. Time and Place for Submission of Proposals

Proposals must be received by **4:00PM on October 16, 2008**. Postmarks will not be considered in judging the timeliness of submissions. Proposals may be delivered or mailed to:

San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 7th Floor
San Francisco, CA 94103
Attention: Jason Gallegos

Proposers shall submit 12 copies of the proposal and two copies, separately bound, of required HRC Forms in a sealed envelope clearly marked **Advertising on SFMTA Property RFP** to the above location. Proposals that are submitted by fax will not be accepted. Late submissions will not be considered.

B. Minimum Qualifications

Responsive proposals must document the proposer's compliance with the following minimum qualifications:

1. The proposer, its key management team, and each of its subcontractors must have at least three years experience in selling advertising on transit vehicles and/or other transit property in major metropolitan markets.
2. The proposer must have had advertising contracts worth over \$10,000,000 per year for each of the last three years.

RFP for Advertising on San Francisco Municipal Transportation Agency Property

3. The proposer must have had a corporate net worth of at least \$25,000,000 for the last three years.
4. The proposer must demonstrate its financial stability by submitting the following:
 - a. A written commitment to provide a letter of credit in the amount of \$3,000,000. During the extensions of the original term of the contract, if exercised, the letter of credit would be required to be increased to \$5,000,000;
 - b. Three bank references that will validate the prime firm's financial responsibility, including the name and phone number of a bank officer familiar with the firm's account;
 - c. Copies of the prime firm's financial statements from the last three years, with profit and loss statements for transit and other advertising broken down in detail for major media markets in the United States; and
 - d. A written commitment to provide a performance bond of \$7,000,000 for the first ten years of the contract, to be increased to \$10,000,000 for the duration of the contract extensions, if exercised.

Respondents that do not meet these minimum qualifications will not be considered and their RFP submissions will be considered non-responsive.

C. Format

Proposals shall be clear, concise and complete. Partial or complete omission of any required element of the proposal will disqualify the proposal as non-responsive. The proposal shall total no more than 25 pages, double-sided. Documents requested in section D(4) of this Section III shall be submitted in a separate, sealed enveloped clearly labeled "Offer of Compensation" and will not be counted as part of the 25-page limit. Documents requested in Sections (III)(G) and VI(N) shall be submitted separately and also will not be counted as part of the 25-page limit. All pages shall be 8-1/2" x 11", minimum size 11 font. All documents submitted shall be bound in a binder with each section separated by tabbed dividers and shall include a Table of Contents. Tabbed dividers shall be used to separate any distinct documents attached as appendices. Proposers must also submit an electronic version of the proposal.

D. Content

Firms interested in responding to this RFP must submit the following information, in the order specified below:

RFP for Advertising on San Francisco Municipal Transportation Agency Property**1. Introduction and Executive Summary**

Submit a letter of introduction and executive summary of the proposal. The letter must be signed by a person authorized by your firm or joint venture to obligate the firm or joint venture to perform the commitments contained in the proposal. Submission of the letter will constitute a representation by the proposer that it is willing and able to perform the commitments contained in the proposal.

2. Experience and Qualifications

- a. Provide the full name, address, and phone number of the contact person at the prime firm, and any subcontractors, of the proposer's team. For all firms named in the proposal, provide the type of ownership, number of years each firm has been in business under the present business name (and any other prior names), and the number of years of experience selling advertising on transit vehicles and/or other transit property, or of the type of work for which the firm is listed in the proposal.
- b. Include a description of the proposer's qualifications and experience, especially as they relate to advertising on transit vehicles and/or other transit property.
- c. For the prime firm, list all contracts you have had during the last five years for advertising on transit vehicles and/or other transit property. For each contract, identify the agency, provide the names of individuals and telephone numbers and email addresses of contacts at the agency, specify the term (years) of the contract, and the type of services provided under the contract. These agencies may be contacted as business references.
- d. For the prime contractor and key subcontractors, name the key personnel who will have primary responsibilities for the services proposed. Identify the individual who will be the SFMTA's single point of contact for this project and who will direct, coordinate and control the contract (the "Contract Manager"). For each of the key personnel, specify his or her experience and qualifications, proposed project role, years with the firm, and years of experience in his or her assigned area of this project. Specify whether any members of the team have experience in "green" technology, including the use of green cleaning products. Include a written assurance that the key individuals listed will perform the work and will not be substituted with other personnel or reassigned to another project without the SFMTA's prior approval.
- e. Attach brief resumes of key personnel assigned to this project for each firm listed.
- f. Provide an organization chart naming all key personnel participating in the project. Identify the Contract Manager, the operations and maintenance manager, the person responsible for sales, and the person responsible for financial matters. Describe how the firm will assign and manage employees and subcontractors in order to provide the services described in the Scope of Work. Identify the relationships between the prime contractor and subcontractors, including the utilization of any small businesses.

RFP for Advertising on San Francisco Municipal Transportation Agency Property

Describe how the proposed organization will optimally provide the services requested in the RFP.

- g. Specify whether the proposer (or any predecessor in interest) has been involved in any litigation involving any contract for advertising on transit vehicles and/or other transit property. Describe the nature of the litigation, the parties and the status or outcome (judgment, settlement, etc.)
- h. Specify whether a transit agency or municipality has ever terminated any contract with the proposer (or any predecessor in interest) for advertising on transit vehicles and/or other transit property. Identify the terminating agency, the inception and termination dates of the contract, and describe the nature of such termination (**e.g.** for cause, for convenience).

3. Proposal Approach

- a. Provide a description of the SFMTA properties listed on Appendices C-1 through C-7 for which the firm proposes to sell advertising. If any SFMTA property listed in Appendix C is excluded from the proposal, provide an explanation for why the firm is not proposing to sell advertising for that SFMTA property. The proposal shall also include a sales plan that will specify, at a minimum, (i) the proposer's strategy for selling advertisements to local, national and international advertisers, (ii) the proposer's strategy for selling advertisements for each of the different types of SFMTA property listed on Appendices C-1 through C-7 that are included in the proposal, and (iii) the proposer's plans for selling the maximum amount of advertising space on SFMTA property and minimizing the amount of empty, unused space.
- b. Include your firm's ideas for new advertising opportunities, designs and locations.
- c. Provide a maintenance and installation plan for advertising on transit vehicles and/or other transit property including:
 - (i) A time line showing elapsed time for advertisement posting, installation, inspection and removal.
 - (ii) A description of a cleaning schedule and routine, including graffiti removal and removal of paint, markers, stickers, unauthorized posters, etc.
 - (iii) A plan for minimizing interference to SFMTA operations during maintenance and installation activities.
 - (iv) A statement that your firm will repair any hazardous condition caused by the firm's installation, maintenance or removal of equipment, or other activities related to the contract, within 24 hours of notification.
 - (v) Plan for minimizing the use of maintenance products that contain hazardous materials and maximizing the use of green cleaning products.
 - (vi) Details of how your firm will staff and manage a quality assurance and control program, including oversight of subcontractors and vendors.

RFP for Advertising on San Francisco Municipal Transportation Agency Property

- d. Submit a design book which will include examples of your firm's proposed advertising for SFMTA property. This design book should include sample designs for as many types of SFMTA property as possible, but must include examples for transit vehicles and parking garages. In addition, create a 3-D site on the Web to which SFMTA staff will have access (and which can be linked to the SFMTA Website) which will also display the sample designs. The SFMTA may display some or all of the designs for public viewing following the oral interviews.

4. Offer of Compensation

In exchange for this exclusive right to sell advertising on SFMTA property, the contractor will be responsible for the following payments to the SFMTA:

- a. On a monthly basis, the greater of:
- (i) a MAG in an amount to be proposed in the contractor's response to this RFP—in no event, however, shall the proposed MAG be less than \$10 million for the first year of the contract, escalated by 3.5% per year and increased at year 6. Depending upon whether the SFMTA elects to exercise the two options to extend the contract, the MAG would also be increased in years 11 and 16 of the contract, as described in the chart below; or
 - (ii) 60% of the contractor's annual gross revenues earned in connection with the rights to advertise provided in the contract; and
- b. An annual fee of \$500,000 for administration of the contract, to be escalated each year by the percentage change in the most recently published 12 month average of the Consumer Price Index distributed by the Bureau of Labor Statistics for the Consolidated Metropolitan Statistical Area covering San Francisco - Oakland - San Jose ("Bay Area CPI"); and
- c. Annual marketing support of \$250,000, plus \$400,000 in media and/or services, either provided directly to the SFMTA or purchased for the use of the SFMTA, as escalated each year by the percentage change in the most recently published 12 month average CPI of the Bay Area.

Fiscal Year	MAG
2009-10	\$10,000,000
2010-11	10,350,000
2011-12	10,712,250
2012-13	11,087,179
2013-14	11,475,230
2014-15	12,000,000
2015-16	12,420,000
2017-18	13,304,615
2018-19	13,770,276
2019-20*	14,500,000

RFP for Advertising on San Francisco Municipal Transportation Agency Property

2020-21*	15,007,500
2021-22*	15,532,763
2022-23*	16,076,409
2023-24*	16,639,084
2024-25*	17,500,000
2025-26*	18,112,500
2026-27*	18,746,438
2027-28*	19,402,563
2028-29*	20,081,653
Total	\$289,573,157

*Assumes that the option(s) to extend the contract are exercised by the SFMTA

All proposals must also include a breakdown of the MAG for parking garages.

All proposals must include a written Offer of Compensation, which shall include a statement that the proposing firm agrees to make the payments described above. Any proposal that includes a MAG of less than the amounts described above shall be deemed non-responsive.

The Offer of Compensation must be submitted to the City in a separate, sealed envelope clearly labeled "Offer of Compensation."

E. City's Option: Central Subway Project

The City, in its sole discretion, may exercise the option to require the contractor to implement an advertising program in the new Central Subway stations and tunnel after their completion.

Proposals must include the following information:

- Proposer's experience in providing similar programs in subway and tunnel systems, including the names of clients and a description of those programs;
- Samples of subway and tunnel advertisements; and
- Examples of revenues paid by contractor to clients for similar programs.

F. Attestation Statements and Certifications

The proposer and all subcontractors named in a proposal must individually sign the Attestation of Compliance and Certifications attached as Appendices F, G and H. Any proposal that does not include the executed Attestation of Compliance and Certifications as required by the RFP will be deemed non-responsive and will not be scored. Any proposer who violates representations made in the Attestation of Compliance and Certifications, directly or through an agent, lobbyist or subcontractor, will be disqualified from the selection process for this contract.

G. Other Required Documents

RFP for Advertising on San Francisco Municipal Transportation Agency Property

In addition to the requirements on the content of the proposal discussed above, firms that want to be considered for this contract must submit the following documents as part of the submittal described in Section III(A) above. Both the prime contractor and any subcontractors will need to submit items 1 through 4 listed below:

1. Completed SFMTA Questionnaire on Recruitment, Hiring and Training Practices (Appendix A)
2. A copy of the firm's Nondiscrimination Program or EEO Policy Statement (if any)
3. Completed Business Tax Declaration
4. Completed Human Rights Commission HRC-12B-101 Form (<http://www.sfgov.org/site/uploadedfiles/sfhumanrights/forms/12b101.pdf>)
5. If using DBE/LBE/SBE firms as part of your proposal, submit SFMTA Form 1 – DBE/LBE/SBE Participation Report (Appendix A)

IV. Evaluation and Selection Criteria

A. Contractor Selection Process

A Selection Committee will evaluate the proposals, using the Selection Criteria outlined below. All responsive proposers will be invited to make a presentation and participate in an oral interview that will include detailed discussions of the various elements of their proposals. The SFMTA will provide directions on presentation materials and information prior to the oral interview. Those individuals who will actually be assigned to the project shall make presentations at the oral interview. Firms may be required to submit additional information to clarify their proposals prior to or at the interview.

The SFMTA will negotiate a contract with the proposer with the highest total score. If the SFMTA is unable to negotiate a contract with the highest-ranked proposer in a reasonable time, the SFMTA, in its sole discretion, may terminate negotiations with the highest-ranked proposer and begin contract negotiations with the next highest-ranked proposer. The final Agreement will be approved by the SFMTA Board of Directors and the Parking Authority Commission and, if required, by the San Francisco Board of Supervisors.

The SFMTA reserves the right not to negotiate with proposers and to select the highest-ranked proposer and its proposal as submitted.

Proposers may request debriefing on a firm's final ranking in writing. Debriefing will be scheduled after final award of the contract.

B. Selection Criteria

The proposals will be evaluated by a Selection Committee comprised of SFMTA and City representatives. The Selection Committee may also include representatives of other transit agencies and persons knowledgeable about transit and transit advertising. The City intends to

RFP for Advertising on San Francisco Municipal Transportation Agency Property

evaluate the proposals generally in accordance with the criteria itemized below. The firms will be interviewed by the Selection Committee to make the final selection.

1. Experience and Qualifications (up to 20 points)

- a. Expertise of the firm, assigned personnel and subcontractors in managing a transit advertising contract; and
- b. Quality of organization structure; and
- c. Results of reference checks.

2. Quality of the Proposal (up to 30 points)

- a. Understanding of the scope of work and tasks to be performed; and
- b. Completeness of the proposal, including the number and variety of SFMTA properties listed on Appendices C-1 through C-7 for which the firm has submitted a proposal to sell advertising and the quality of the sales plan; and
- c. Creativity of ideas included in the proposal; and
- d. Creativity of designs included in the proposal, and
- e. Quality of proposed maintenance and installation plan.

3. Offer of Compensation (up to 50 points)

All proposers must meet, at a minimum, the MAG set forth in section III.D(4). **Any proposal that does not meet the MAG will be deemed non-responsive.** The proposer with the highest overall Offer of Compensation, considering the net present value to the City, will be awarded 50 points. Other proposers will be awarded points in proportion to the proposer with the highest score. The formula is as follows:

$$(\text{lower}) \text{ proposer's score} = \frac{\text{value of proposer offer}}{\text{value of highest proposer's offer}} \times 50$$

V. Pre-Proposal Conference, Site Tour and Contract Award**A. Pre-Proposal Conference and Site Tour**

Proposers are encouraged to attend a pre-proposal conference on **September 15, 2008**, at **10:00AM** to be held at One South Van Ness Avenue, San Francisco, CA 94103 to discuss the requirements of the contract and to take questions concerning the RFP. All prospective proposers are urged to attend this conference. A written list of attendees will be available at the end of the meeting.

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A site tour may be held at one or more SFMTA locations on **September 15, 2008 at 1:00PM**. For safety and security reasons, proposers may not enter any SFMTA property except on this official SFMTA tour.

B. Contract Award

SFMTA staff will commence contract negotiations with the highest ranked proposer. The selection of any proposal shall not imply acceptance by the City of all terms of the proposal, which may be subject to further negotiations and approvals. If a satisfactory contract cannot be negotiated in a reasonable time the SFMTA, in its sole discretion, may terminate negotiations with the highest ranked proposer and begin contract negotiations with the next highest ranked proposer.

No proposal may be accepted and no contract may be awarded until such time as (a) the Executive Director/CEO of the SFMTA recommends the Agreement for award and (b) the SFMTA Board of Directors and Parking Authority Commission each adopt a resolution awarding the Agreement. The final contract may also require the approval of the San Francisco Board of Supervisors.

C. Form of Contract

The successful proposer will be required to enter into a contract on terms substantially similar to Appendix E. Failure to timely execute the contract, or to furnish any and all insurance certificates and policy endorsements, surety bonds, letter of credit or other materials required in the contract, shall be deemed an abandonment of a contract offer. If the highest-ranked proposer fails to comply with these requirements, the SFMTA, in its sole discretion, may select another firm and may proceed against the original firm selected for damages.

VI. Terms and Conditions for Receipt of Proposals**A. Errors and Omissions in RFP**

Proposers are responsible for reviewing all portions of this RFP. Proposers are to promptly notify the SFMTA, in writing, if the proposer discovers any ambiguity, discrepancy, omission, or other error in the RFP. Any such notification should be directed to the SFMTA promptly after discovery, but in no event later than 10 calendar days prior to the date for receipt of proposals. Modifications and clarifications will be made by addenda as provided below.

B. Questions

Questions regarding this RFP should be addressed in writing to:

RFP for Advertising on San Francisco Municipal Transportation Agency Property

San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, California 94103
Attention: Jason Gallegos
Jason.Gallegos@sfmta.com

The SFMTA will keep a record of all parties who request and receive copies of the RFP. Any requests for information concerning the RFP, whether submitted before or after the pre-proposal conference, must be in writing, and any substantive replies will be issued as written addenda to all parties who have requested and received a copy of the RFP from the SFMTA. Questions raised at the pre-proposal conference may be answered orally. If any substantive new information is provided in response to questions raised at the pre-proposal conference, it will also be memorialized in a written addendum to this RFP and will be distributed to all parties that received a copy of the RFP. No questions or requests for interpretation will be accepted after **4:00PM on September 30, 2008.**

C. Objections to RFP Terms

Should a proposer object on any ground to any provision or legal requirement set forth in this RFP, the proposer must, not more than 10 calendar days after the RFP is issued, provide written notice to the SFMTA setting forth with specificity the grounds for the objection. The failure of a proposer to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.

D. Addenda to RFP

The SFMTA may modify the RFP prior to the proposal due date by issuing written addenda. Addenda will be sent via email or by regular, first class U.S. mail to the last known business address of each firm listed with the SFMTA as having received a copy of the RFP. SFMTA will make reasonable efforts to notify proposers in a timely manner of modifications to the RFP. Notwithstanding this provision, the proposer shall be responsible for ensuring that its proposal reflects any and all addenda issued by the SFMTA prior to the proposal due date regardless of when the proposal is submitted. Therefore, the SFMTA recommends that, prior to submitting a proposal, proposers call Mr. Jason Gallegos at (415) 701-4622 or send an email to him at Jason.Gallegos@sfmta.com.

E. Term of Proposal

Submission of a proposal signifies that the proposer's offer remains open for one year from the proposal due date and that the offer is genuine and not the result of collusion or any other anti-competitive activity.

F. Revisions to Proposal

A proposer may revise a proposal at the proposer's own discretion at any time before the deadline for submission of proposals. The proposer must submit the revised proposal in the

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same manner as the original. A revised proposal must be received on or before the proposal due date.

In no case will a statement of intent to submit a revised proposal, or commencement of a revision process, extend the proposal due date for any proposer.

At any time during the proposal evaluation process, the SFMTA may require a proposer to provide oral or written clarification of its proposal. The SFMTA reserves the right to make an award without further clarifications of proposals received.

G. Errors and Omissions in Proposal

Failure by the SFMTA to object to an error, omission, or deviation in the proposal will in no way modify the RFP or excuse the proposer from full compliance with the specifications of the RFP or any contract awarded pursuant to the RFP.

H. Financial Responsibility

The SFMTA accepts no financial responsibility for any costs incurred by a firm in responding to this RFP. Submissions of the RFP will become the property of the City and may be used by the City in any way deemed appropriate.

I. Proposer's Obligations under the Campaign Reform Ordinance

Proposers must comply with Section 1.126 of the S.F. Campaign and Governmental Conduct Code, which states:

No person who contracts with the City and County of San Francisco for the rendition of personal services, for the furnishing of any material, supplies or equipment to the City, or for selling any land or building to the City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer, or candidates for such an office, or committee controlled by such officer or candidate at any time between commencement of negotiations and the later of either (1) the termination of negotiations for such contract, or (2) three months have elapsed from the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

If a proposer is negotiating for a contract that must be approved by an elected local officer or the board on which that officer serves, during the negotiation period the proposer is prohibited from making contributions to:

- the officer's re-election campaign
- a candidate for that officer's office
- a committee controlled by the officer or candidate.

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The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a contractor approaches any city officer or employee about a particular contract, or a city officer or employee initiates communication with a potential contractor about a contract. The negotiation period ends when a contract is awarded or not awarded to the contractor. Examples of initial contacts include: (1) a vendor contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (2) a city officer or employee contacts a contractor to propose that the contractor apply for a contract. Inquiries for information about a particular contract, requests for documents relating to a Request for Proposal, and requests to be placed on a mailing list do not constitute negotiations.

Violation of Section 1.126 may result in the following criminal, civil, or administrative penalties:

1. **Criminal.** Any person who knowingly or willfully violates section 1.126 is subject to a fine of up to \$5,000 and a jail term of not more than six months, or both.
2. **Civil.** Any person who intentionally or negligently violates section 1.126 may be held liable in a civil action brought by the civil prosecutor for an amount up to \$5,000.
3. **Administrative.** Any person who intentionally or negligently violates section 1.126 may be held liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for an amount up to \$5,000 for each violation.

For further information, proposers should contact the San Francisco Ethics Commission at (415) 581-2300.

J. Sunshine Ordinance

In accordance with S.F. Administrative Code Section 67.24(e), contractors' bids, responses to RFPs and all other records of communications between the City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefits until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

K. Public Access to Meetings and Records

If a proposer is a non-profit entity that receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the S.F. Administrative Code, the proposer must comply with Chapter 12L. The proposer must include in its proposal (1) a statement describing its efforts to comply with the Chapter 12L provisions regarding public access to proposer's meetings and records, and (2) a summary of all complaints concerning the proposer's compliance with Chapter 12L that were filed with the City in the last two years and deemed by the City to be substantiated. The summary shall also describe the

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disposition of each complaint. If no such complaints were filed, the proposer shall include a statement to that effect. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in proposer's Chapter 12L submissions shall be grounds for rejection of the proposal and/or termination of any subsequent Agreement reached on the basis of the proposal.

L. Reservations of Rights by the City

The issuance of this RFP does not constitute an agreement by the City that any contract will actually be entered into by the City. The City expressly reserves the right at any time to:

1. Waive or correct any defect or informality in any response, proposal, or proposal procedure;
2. Reject any or all proposals;
3. Reissue a Request for Proposals;
4. Prior to submission deadline for proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment or services to be provided under this RFP, or the requirements for contents or format of the proposals;
5. Procure any materials, equipment or services specified in this RFP by any other means; or
6. Determine that no project will be pursued.

M. No Waiver

No waiver by the City of any provision of this RFP shall be implied from any failure by the City to recognize or take action on account of any failure by a proposer to observe any provision of this RFP.

N. Local Business Enterprise Goals and Outreach

The SFMTA encourages each proposer, including subcontractors, to actively recruit minorities and women for its workforce. The Questionnaire on Recruitment, Hiring and Training Practices (Appendix A) is a workforce questionnaire for each proposer to submit with its proposal. The SFMTA also requests copies of any non-discrimination or equal employment opportunity plans that proposers have in place.

The SFMTA encourages proposers to submit proposals that make maximum utilization of service agencies and suppliers that are small businesses, including minorities, women and disadvantaged businesses, in the performance of work under the contract. Helpful databases include the following: S.F. Human Rights Commission's website at www.sfhrc.org for the City's Local Business Enterprise Directory; the Caltrans federally certified Disadvantaged Business Enterprise database at www.dot.ca.gov/hq/hep/; and the State of California certified small business database at www.pd.dgs.ca.gov/smbus/default.htm. Questions about available firms should be addressed to:

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Mr. André Boursse
SFMTA Contract Compliance Office
One South Van Ness, 3rd floor
San Francisco, CA 94103
Tel: (415) 701-4362
Fax: (415) 701-4347

O. Communications Prior to Contract Award

It is the policy of the SFMTA that only employees identified in the RFP as contacts for this competitive solicitation are authorized to respond to comments or inquiries from proposers or potential proposers seeking to influence the contractor selection process or the award of the contract. This prohibition extends from the date the RFP is issued until the date when the contractor selection is finally approved by the SFMTA Board of Directors and, if required, by the San Francisco Board of Supervisors.

All firms and subcontractor(s) responding to this RFP are hereby notified that they may not contact any SFMTA staff member, other than a person with whom contact is expressly authorized by this RFP (Jason Gallegos), for the purpose of influencing the contractor selection process or the award of the contract from the date the RFP is issued to the date when the contract award is approved by the Board of Directors of SFMTA and the Parking Authority Commission and, if required, by the San Francisco Board of Supervisors. This prohibition does not apply to communications with SFMTA staff members regarding normal City business not regarding or related to this RFP.

All firms and subcontractor(s) responding to this RFP are hereby notified that any written communications sent to one or more members of the SFMTA Board of Directors concerning a pending contract solicitation shall be distributed by the SFMTA to all members of the SFMTA Board of Directors and the designated staff contact person(s) identified in the RFP.

Except as expressly authorized in the RFP, where any person representing a proposer or potential proposer contacts any SFMTA staff for the purpose of influencing the content of the competitive solicitation or the award of the contract between the date when the RFP is issued and the date when the final selection is approved by the SFMTA Board of Directors, and, if required, by the San Francisco Board of Supervisors, the proposer or potential proposer shall be disqualified from the selection process. However, a person who represents a proposer or potential proposer may contact City elected officials and may contact the Executive Director/CEO of the SFMTA if s/he is unable to reach the designated staff contact person(s) identified in the RFP or wishes to raise concerns about the competitive solicitation.

Additionally, the firms and subcontractor(s) responding to this RFP will not provide any gifts, meals, transportation, materials or supplies or any items of value or donations to or on behalf of any SFMTA staff member from the date the RFP is issued to the date when the contract award is approved by the Board of Directors of SFMTA and if required, by the San Francisco Board of Supervisors.

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All lobbyists or any agents representing the interests of proposing prime contractors and subcontractor(s) shall also be subject to the same prohibitions.

An executed Attestation of Compliance (Appendix F) certifying compliance with this section of the RFP will be required to be submitted signed by all firms and named subcontractor(s) as part of the response to the this RFP. Any proposal that does not include the executed Attestation of Compliance as required by this section will be deemed non-responsive and will not be evaluated.

Any proposer who violates the representations made in such Attestation of Compliance, directly or through an agent, lobbyist or subcontractor, will be disqualified from the selection process.

P. Resource Conservation

All documents submitted in response to this RFP must be on recycled paper and printed on double-sided pages to the maximum extent possible unless otherwise required herein.

VII. Contract Requirements**A. Standard Contract Provisions**

Proposers are urged to pay special attention to the requirements of Administrative Code Chapters 12B and 12C, Nondiscrimination (§34 in the Sample Agreement included as Appendix E); the Minimum Compensation Ordinance (§43 in the Sample Agreement included as Appendix E); the Health Care Accountability Ordinance (§44 in the Sample Agreement included as Appendix E); the First Source Hiring Program (§45 in the Sample Agreement included as Appendix E); and applicable conflict of interest laws (§23 and §46) in the Sample Agreement included as Appendix E), as set forth in paragraphs B, C, D, E and F below.

B. Nondiscrimination in Contracts and Benefits

The successful proposer will be required to agree to comply fully with and be bound by the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Generally, Chapter 12B prohibits the City and County of San Francisco from entering into contracts or leases with any entity that discriminates in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of employees. The Chapter 12C requires nondiscrimination in contracts in public accommodation. Additional information on Chapters 12B and 12C is available on the HRC's website at www.sfhrc.org.

C. Minimum Compensation Ordinance (MCO)

The successful proposer will be required to agree to comply fully with and be bound by the provisions of the Minimum Compensation Ordinance (MCO), as set forth in S.F. Administrative Code Chapter 12P. Generally, this Ordinance requires contractors to provide employees covered by the Ordinance who do work funded under the contract with hourly gross compensation and

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paid and unpaid time off that meet certain minimum requirements. For the contractual requirements of the MCO, see §43 in the Sample Agreement included as Appendix E.

For the amount of hourly gross compensation currently required under the MCO, see www.sfgov.org/olse/mco. Note that this hourly rate may increase on January 1 of each year and that contractors will be required to pay any such increases to covered employees during the term of the contract.

Additional information regarding the MCO is available on the web at www.sfgov.org/olse/mco.

D. Health Care Accountability Ordinance (HCAO)

The successful proposer will be required to agree to comply fully with and be bound by the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in S.F. Administrative Code Chapter 12Q. Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the HCAO is available on the web at www.sfgov.org/olse/hcao.

E. First Source Hiring Program (FSHP)

If the contract is for more than \$50,000, then the First Source Hiring Program (Admin. Code Chapter 83) may apply. Generally, this ordinance requires contractors to notify the First Source Hiring Program of available entry-level jobs and provide the Workforce Development System with the first opportunity to refer qualified individuals for employment.

Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the FSHP is available on the web at www.sfgov.org/moed/fshp.htm and from the First Source Hiring Administrator, (415) 401-4960.

F. Conflicts of Interest

The successful proposer will be required to agree to comply fully with and be bound by the applicable provisions of state and local laws related to conflicts of interest, including Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California. The successful proposer will be required to acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such fact during the term of the Agreement.

Individuals who will perform work for the City on behalf of the successful proposer might be deemed consultants under state and local conflict of interest laws. If so, such individuals will be required to submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the City within ten calendar days of the City notifying the successful proposer that the City has selected the proposer.

RFP for Advertising on San Francisco Municipal Transportation Agency Property**VIII. Protest Procedures****A. Protest Of Non-Responsiveness Determination**

Within five working days of the City's issuance of a notice of non-responsiveness, any firm that has submitted a proposal and believes that the City has incorrectly determined that its proposal is non-responsive may submit a written notice of protest. Such notice of protest must be received by the City on or before the fifth working day following the City's issuance of the notice of non-responsiveness. The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the proposer, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

B. Protest of Contract Award

Within five working days of the City's issuance of a notice of intent to award the contract, any firm that has submitted a responsive proposal and believes that the City has incorrectly selected another proposer for award may submit a written notice of protest. Such notice of protest must be received by the City on or before the fifth working day after the City's issuance of the notice of intent to award.

The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the proposer, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

C. Delivery of Protests

All protests must be received by the due date. If a protest is mailed, the protestor bears the risk of non-delivery within the deadlines specified herein. Protests should be transmitted by a means that will objectively establish the date the City received the protest. Protests or notice of protests made orally (e.g., by telephone) will not be considered. Protests must be delivered to:

San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 7th Floor
San Francisco, CA 94103
Attention: Jason Gallegos
Jason.Gallegos@sfmta.com

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Appendix 1 Standard Forms

The requirements described in this Appendix are separate from those described in Appendix A.

Before the City can award any contract to a contractor, that contractor must file three standard City forms (items 1-3 on the chart). Because many contractors have already completed these forms, and because some informational forms are rarely revised, the City has not included them in the RFP package. Instead, this Appendix describes the forms, where to find them on the Internet (see bottom of page 2), and where to file them. If a contractor cannot get the documents off the Internet, the contractor should call (415) 554-6248 or e-mail Purchasing (purchasing@sfgov.org) and Purchasing will fax, mail or e-mail them to the contractor.

If a contractor has already filled out items 1-3 (see note under item 3) on the chart, **the contractor should not do so again unless the contractor's answers have changed.** To find out whether these forms have been submitted, the contractor should call Vendor File Support in the Controller's Office at (415) 554-6702.

If a contractor would like to apply to be certified as a local business enterprise, it must submit item 4. To find out about item 4 and certification, the contractor should call Human Rights Commission at (415) 252-2500.

Item	Form name and Internet location	Form	Description	Return the form to; For more info
1.	Request for Taxpayer Identification Number and Certification www.sfgov.org/oca/purchasing/forms.htm www.irs.gov/pub/irs-fill/fw9.pdf	W-9	The City needs the contractor's taxpayer ID number on this form. If a contractor has already done business with the City, this form is not necessary because the City already has the number.	Controller's Office Vendor File Support City Hall, Room 484 San Francisco, CA 94102 (415) 554-6702
2.	Business Tax Declaration www.sfgov.org/oca/purchasing/forms.htm	P-25	All contractors must sign this form to determine if they must register with the Tax Collector, even if not located in San Francisco. All businesses that qualify as "conducting business in San Francisco" must register with the Tax Collector.	Controller's Office Vendor File Support City Hall, Room 484 San Francisco, CA 94102 (415) 554-6702

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Item	Form name and Internet location	Form	Description	Return the form to; For more info
3.	S.F. Administrative Code Chapters 12B & 12C Declaration: Nondiscrimination in Contracts and Benefits www.sfgov.org/oca/purchasing/forms.htm – In Vendor Profile Application	HRC-12B-101	Contractors tell the City if their personnel policies meet the City’s requirements for nondiscrimination against protected classes of people, and in the provision of benefits between employees with spouses and employees with domestic partners. Form submission is not complete if it does not include the additional documentation asked for on the form. Other forms may be required, depending on the answers on this form. Contract-by-Contract Compliance status vendors must fill out an additional form for each contract.	Human Rights Comm. 25 Van Ness, #800 San Francisco, CA 94102-6059 (415) 252-2500
4.	HRC LBE Certification Application www.sfgov.org/oca/purchasing/forms.htm – In Vendor Profile Application		Local businesses complete this form to be certified by HRC as LBEs. Certified LBEs receive a bid discount pursuant to Chapter 14B when bidding on City contracts. To receive the bid discount, you must be certified by HRC by the proposal due date.	Human Rights Comm. 25 Van Ness, #800 San Francisco, CA 94102-6059 (415) 252-2500

Where the forms are on the Internet**Office of Contract Administration**

Homepage: www.sfgov.org/oca/
Purchasing forms: Click on “Required Vendor Forms” under the “Information for Vendors and Contractors” banner.

Human Rights Commission

HRC’s homepage: www.sfhrc.org
Equal Benefits forms: Click on “Forms” under the “Equal Benefits” banner near the bottom.

LBE certification form: Click on “Forms” under the “LBE” banner near the bottom

APPENDIX A

PROPOSER _____ PROPOSAL DUE DATE SUBMISSION

SFMTA FORM No. 1 - CONSULTANT DBE/LBE/SBE PARTICIPATION REPORT

NAME OF FIRMS, ADDRESS, TELEPHONE NO. AND CONTACT PERSON; FEDERAL I.D. NO. (or STATE I.D. NO.)	DBE/LBE/SBE		NON- DBE/LBE/SBE		SCOPE OF WORK & CERTIFICATIO N TYPE & CERT. NO.	% OF PROJECT WORK	ANTICIPATED DOLLAR VALUE OF PARTICIPATION
	MALE	FEMALE	MALE	FEMALE			
			Total D/L/SBE (Male)				
Name & Signature: Authorized Officer of Consultant Firm (Print or Type)			Total D/L/SBE(Female)				
			Total Non-SBE (Male)				
Date			Total Non-SBE(Female)				

PROPOSER_____

**APPENDIX A
SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
QUESTIONNAIRE
NONDISCRIMINATION REQUIREMENTS**

Professional or Technical Services

Instructions

1. Please complete and return the attached Nondiscrimination Questionnaire, Workforce Data forms and Participation Form with a copy of your entire proposal directly to the SFMTA.
2. Please complete the questionnaire for the office that will ultimately perform the project work.
3. The questionnaire must be completed by:
 - a. All prime consultants
 - b. All joint venture partners and subconsultants
4. Support firms (e.g., printers, photographers, etc.) need not complete any part of the questionnaire.
5. Approved State or Federal Nondiscrimination Programs may be substituted for those items where the information requested in the questionnaire is identical to that contained in the State or Federal Programs.
6. If the questionnaire(s) is/are not correctly and fully completed, SFMTA will not consider your proposal. For firms selected as finalists, all DBE/LBE/SBEs participating in the project must be certified prior to contract award.

APPENDIX A

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY QUESTIONNAIRE ON RECRUITMENT, HIRING, AND TRAINING PRACTICES FOR CONSULTANTS

NOTE: The term "minority" refers to the following groups: American Indian or Alaskan Native, Asian or Pacific Islander, African-American, Filipino, and Hispanic.

(Please answer all questions. Use additional sheets if necessary.)

Name of Company: _____

Address: _____

Location of Company Workforce (Check one):

_____ San Francisco

_____ Other Location, provide address:

- _____

1. Name, title, telephone number of company official at the establishment who is responsible for recruitment and hiring and who will provide information concerning this matter.

 2. Name, title, and telephone number of senior managing official at the establishment if not the person named in the answer to question 1.

 3. Describe briefly the basic business activity at the establishment (i.e., identify the product produced or the services performed.)

4. Describe briefly how employees at various levels are hired (see Workforce Breakdown #8).

A. Technicians and/or others.

B. Support Staff (accounting, reception, and clerical).

5. Describe in full, Nondiscrimination programs in the past two years. (Consultants may submit one (1) copy of their Nondiscrimination Program directly to SFMTA Contract Compliance Office, One South Van Ness Ave., 3rd Floor, San Francisco, CA 94103, (415) 701-4443.

-- Participation in training programs.

--- Participation in apprenticeship programs.

-- Participation in any summer hire program or own program.

-- Paid educational leave or tuition to improve skills and level.

-- Participation in scholarship fund.

-- Participation in clerical training programs.

-- Participation in "other" programs.

6. If minorities and/or women are underutilized explain steps to ensure the firm is not discriminating.
7. Describe joint ventures or subconsulting arrangements in past projects. If there is a company policy on this issue, include it.
8. Complete workforce breakdown. (Separate form, Page SBE-6.)
- 8a. Hires in last 12 months. (Complete separate form, Page SBE-7.)

Appendix A: Workforce Data SPREADSHEET #1

Please fill out this workforce breakdown

Name of firm: _____

Address: _____

EMPLOYEE * CATEGORIES	TOTAL EMPLOYEE		AFRICAN AMERICAN		HISPANIC		ASIAN/ PAC. ISL.		AMER. IND./ ALAK. NTV.		TOTAL MINORITY		PERCENTAGE WHITE		PERCENTAGE MINORITY	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Officials																
Managers																
Professionals																
Technicians																
Admin. Support																
Trainees																
Others																
Full-time																
Part-time																
TOTAL																

3/30/95 * If the list of occupations on the left side of the workforce data form does not match your occupation titles, please modify the data form to indicate occupations peculiar to your organization.

COMPLETED BY Name: _____ Title: _____ Date: _____

Attachment 1: WORKFORCE DATA SPREADSHEET #2Hires in last 12 months

Name of firm: _____

EMPLOYEE CATEGORIES	TOTAL EMPLOYEE		AFRICAN AMERICAN		HISPANIC		ASIAN/ PAC. ISL.		AMER. IND./ ALAK. NTV.		TOTAL MINORITY		PERCENTAGE WHITE		PERCENTAGE MINORITY	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Officials																
Managers																
Professionals																
Technicians																
Admin. Support																
Trainees																
Others																
Full-time																
Part-time																
TOTAL																

COMPLETED BY Name: _____ Title: _____ Date: _____

APPENDIX B**BUSINESS TAX****Business Registration Certificate Requirement**

Unless you have previously submitted this form, failure to complete the Declaration on the reverse and return this form to the Office of Contract Administration (OCA) with your bid will be a basis for rejection of the bid, and OCA will assume that your company does not intend to apply for a Business Registration Certificate.

General

To receive an award, a vendor must have a current Business Registration Certificate or else not be required to register. The registration fee is \$25, \$150, \$250 or \$500, depending on the type and size of your business. The fee (except the \$25 fee) is pro-rated for new registrations, depending on when during the year you started your business in San Francisco, and is based on estimated tax liability for your payroll expense. To determine the registration fee due, you can check the website at <http://sfgov.org/tax/>. In addition, every business "conducting business in San Francisco" must file a combined Payroll Expense Tax Statement and Business Registration renewal on an annual basis. Businesses with a computed tax of \$2,500 or less are exempt from paying payroll expense tax if the statement is filed on time.

Who must obtain a registration certificate?

Any business located, or conducting business, in San Francisco.

What is "conducting business in San Francisco"?

Briefly, it means engaging in business in San Francisco, having met one or more of questions 1-7 on the reverse specifically relate to "conducting business."

Are there exceptions?

Yes. A person receiving rental income solely from a cooperative housing corporation, or a residential structure of less than 4 units, or a residential condominium, shall not be deemed to be engaging in business.

My business is not located in San Francisco. Is a registration certificate still required?

Yes, if the business "conducts business in San Francisco" All businesses, including those which do not "do business in San Francisco" but excluding government agencies, must sign and return the Declaration.

What's involved in obtaining a registration certificate?

Obtaining a certificate is easy, but not automatic. Once the Tax Collector receives an application, the office must check the payment status of other taxes (Unsecured Personal Property Tax, Payroll/ Business Tax) and licenses or permits. If any tax or license/permit fee is delinquent, the certificate cannot be issued. Only when all taxes and fees are paid in full will the certificate be issued.

Where do I obtain the certificate?

At the Tax Collector's Office. You would obtain an application form from, and submit it and the registration fee to:

Tax Collector's Office, Taxpayer Assistance
City Hall, Room 140
San Francisco, CA 94102-4696

Do Company Divisions, Parents and Subsidiaries have to register separately?

That depends on a company's individual situation. Contact the Tax Collector at (415) 554-6718 or 554-4400 for more information.

Can I do business with the City without a certificate?

Not if you "conduct business in San Francisco." The City can make purchases from businesses only in the following situations:

- The business conducts business in San Francisco and has registered.
- The business does not conduct business in San Francisco and has signed the Declaration.
- The business is non-profit and tax-exempt, has signed the Declaration and has submitted an IRS exemption letter.
- The business is a government agency, bank, insurance company, or other listed exemption.
- There is an emergency. Although OCA can award the contract, the vendor may be subject to business taxes and required to possess a certificate.

These requirements cover service contracts, construction contracts and product purchases.

What if my application is pending during a bid evaluation?

If you are the low bidder on a City contract, and have applied for the certificate but your application has not yet been approved, the City may make the award to you if you sign the Declaration. If you have a receipt from the Tax Collector for the registration fee, submit a **copy** of the receipt with this form.

What if I currently "do not conduct business in San Francisco," but if I win this bid, I will register?

You may answer the questions based on your current status, and you should not register at this time. If you win the bid, you should register with the Tax Collector.

For more information

For information on how to apply for the certificate, call the Tax Collector's Office. For information on your eligibility to receive a particular award, call OCA. See the bottom of the reverse of this form.

Completing the Declaration; Failure to do so

Unless you previously submitted this form, complete the Declaration and, if possible, return it **with your bid or quotation** in the envelope provided. If you submit this form separately, see the mailing address under "Routing" near the bottom of the reverse of this form.

If you do not complete and return this form, that will be a basis for OCA's rejecting the bid, and for assuming that your company should register but will not and therefore that the City cannot do business with you.

If you submitted this form previously

If you submitted this form for an earlier transaction, and if your business tax status has not changed, please discard this form.

Please answer Yes or No to Questions 1-7, based on your company's situation **as of now**. If any answers would change if your company won a bid that is pending, you may submit a new form later.

Conducting Business in San Francisco

Yes No

This person, business, or person's or business's employee:

- | | |
|---|--|
| <input type="checkbox"/> <input type="checkbox"/> | 1. Maintains, owns or leases a fixed place of business within San Francisco. |
| <input type="checkbox"/> <input type="checkbox"/> | 2. Regularly maintains a stock of tangible personal property in San Francisco for sale in the ordinary course of business. |
| <input type="checkbox"/> <input type="checkbox"/> | 3. In the ordinary course of business, employs or loans capital on property within San Francisco. |
| <input type="checkbox"/> <input type="checkbox"/> | 4. Solicits business, performs work, or renders services within the City on a regular bases for all or part of any seven or more separate days during one year (e.g., 4 employees in San Francisco for 2 days each constitute 8 separate days, and require a "yes" answer to this question). If a manufacturer does not conduct business in San Francisco but the manufacturer's independent representative does, only the representative must register. |
| <input type="checkbox"/> <input type="checkbox"/> | 5. Exercise corporate or franchise powers within the |

RFP for Advertising on SFMTA Property

City for

the benefit of the person.

- | | |
|---|--|
| <input type="checkbox"/> <input type="checkbox"/> | 6. Liquidate a business when the liquidators hold themselves out to the public as conducting a liquidated business. |
| <input type="checkbox"/> <input type="checkbox"/> | 7. Utilize the streets within the City and County of San Francisco in connection with the operation of motor vehicles for business purposes for all or part of any seven days during one year. |

If you answered "no" to all Questions 1-7, ordinarily you are not conducting business in San Francisco, need not register with the Tax Collector and may omit items 8-15 following, but you must sign and return this Declaration. However, this is subject to review by the Tax Collector. **If you answered "yes" to any of the questions**, you must answer the remaining questions in this Declaration and, unless an exemption applies, **must register**.

Tax-Exempt Businesses, Banks, Insurance Companies, Others

If you answer Yes to any of items 8-12, you still need to register but need not pay the registration fee. To register, you must submit proof of tax-exempt status to the Tax Collector, with other forms. Proof is usually an exemption letter from the IRS, noting §501(c) or (d) of the Internal Revenue Code. Also, submit this form and proof of tax-exempt status to the Office of Contract Administration (OCA).

Yes No

- ___ ___ 8. This business is non-profit, tax-exempt.
- ___ ___ 9. This business is a bank or an insurance company. (If Yes, indicate your type of business: _____)
- ___ ___ 10. This business owner is visually impaired as licensed under Ch. 6A, Title 12 USC and Art. 5, Ch. 6, Part 2, Div. 10 of the CA Welfare & Institutions Code.
- ___ ___ 11. This business is a skilled nursing facility licensed under Title 22, CA Admin. Code, Div. 5.

Applying for a Business Registration Certificate

If you answered "yes" to any of Questions 1-7, and "no" to Questions 8-11, check item 12, 13, or 14 and complete any applicable blanks. If no item is checked, or if the Declaration is not signed, this will constitute a basis for OCA to reject the bid.

- ___ 12. This company has registered with the Tax Collector. Certificate # _____ (6 digits, e.g., "123456").
- ___ 13. This company applied for a Certificate by mailing the application

I understand that my representation, if any, that I am not engaged in business in San Francisco is subject to review by the Tax Collector. If the Tax Collector determines that I am conducting business in San Francisco, the City may either cancel the contract or withhold payment ten days after written notification by the Tax Collector. I declare (or certify) under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this _____ day of _____, 20_____, at _____, _____
(City) (State)

Name of Company (please print)

General Address

Signature

Name of Signatory (please print)

Remit Address

RFP for Advertising on SFMTA Property

and fee to the Tax Collector, or by submitting the application in

person, on _____, 20_____. The application is pending.

(NOTE: Completing this Declaration is not the same as applying

for a Certificate.) If you submitted the application in person,

please submit with this Declaration a copy of the fee receipt you

received from the Tax Collector.

- ___ 14. This company does not intend to apply for a certificate, although we do "conduct business in San Francisco."
- ___ 15. This company currently does not need to register (answered "NO" to questions 1-7) but if awarded a bid, questions # _____ would be answered "YES" and this company will register.

Title

Telephone Number

Routing

If you are registering, obtain an application from the Tax Collector's website (<http://sf.gov.org/tax/>). **Do not send this P-25 form to the Tax Collector.** We encourage you to send this form **with your bid or quotation** in the envelope provided. If you submit this form separately, send it to: Office of Contract Administration, Business Tax Compliance, City Hall, Room 430, San Francisco, CA 94102-4685. If you submitted this form previously and if your business tax status has not changed, discard this form.

For more information

Regarding how to apply for a certificate, call the Tax Collector at (415) 554-6718 or (415) 554-4400. Regarding a bid, call the OCA at (415) 554-6743.

City, State, ZIP

Remittance Address, if different

Appendix C – 1 Transit Vehicles

Approximate total fleet count: 1,077 vehicles* (fleet defined as vehicles):

Distributed among 5 distinct vehicle types:

- 1. 511 Diesel Buses**
- 2. 331 Trolley Buses**
- 3. 151 Breda Light Rail Vehicles**
- 4. 40 Cable Cars**
- 5. 44 Historic Streetcars**

***(numbers include 51 reserve diesel coaches)**

These numbers are subject to change.

Transit Vehicle advertising opportunities include but are not limited to the following options:

- Fully and or partially wrapped exterior with interior concepts**



- Interior and Exterior panel advertising (all exterior sides, including the roof)



- Wholly and partially covered buses





- Advertising on the floor, seats, window stickers, TransitTV on all vehicles (i.e. Concept trains)





- Window and Door Panels



- **Hangers/Grabbers**



Appendix C – 2 Parking Garages

Inventory consists of the following:

19 facilities: Approximately 5,393,793 square feet (includes commercial space); 13,505 Stalls

	PARKING GARAGES	ADDRESSES	# Stalls	Approx. Square Feet
1	GOLDEN GATEWAY	250 Clay Street, 94111	1,095	226,800
2	LOMBARD STREET	2055 Lombard Street, 94123	205	85,260 (parking) plus 14,437 (commercial)
3	MISSION - BARTLETT	3255 21st Street, 94110	350	113,759
4	MOSCONE CENTER	255 Third Street, 94103	732	255,444 (parking) plus 4,317 (commercial)
5	NORTH BEACH	735 Vallejo Street, 94133	203	82,402 (parking)
6	PERFORMING ARTS	360 Grove Street, 94102	598	213,564 (parking) plus 4,836 (commercial)
7	POLK - BUSH	1399 Bush Street, 94109	129	73,860 (parking) plus 3,700 (commercial)
8	S.F. GENERAL HOSPITAL	2500 24th Street, 94110	807 (Garage) plus 850 (Lots)	480,000 (garage)
9	FIFTH & MISSION	833 Mission Street, 94103	2585	990,000 (parking) plus 26,000 (commercial)
10	VALLEJO STREET	766 Vallejo Street, 94133	163	70,760
11	1660 MISSION	1660 Mission Street, 94103	59	28,000
12	20 HOFF STREET	20 Hoff Street, 94103	98	17,284
13	SUTTER-STOCKTON	444 Sutter Street, 94108	1865	745,000 (parking) plus 30,000 (commercial)
14	JAPAN CENTER	1610 Geary Boulevard, 94115	920	352,100 (parking) plus 1,799 (commercial)
15	ELLIS & O'FARRELL	123 O'Farrell Street, 94108	950	314,549 (parking) plus 10,978 (commercial)

The following include parking garages under Recreation and Park Department jurisdiction but managed by the SFMTA Parking Authority, and are included as part of the collective advertising inventory:

	PARKING GARAGES ADDRESSES		# Stalls	Approx. Square Feet
16	UNION SQUARE	333 Post Street, 94108	985	423,780 (parking) plus 220 (commercial)
17	PORTSMOUTH SQUARE	733 Kearny Street, 94108	504	223,000
18	CIVIC CENTER PLAZA	355 McAllister Street, 94102	843	355,674
19	ST. MARY'S SQUARE	433 Kearny Street, 94108	414	245,445 (parking) plus 825 (commercial)

Advertising opportunities include but are not limited to the following:

- Gate Arm Advertising



- Wall Advertising



- Full Elevator Wraps



- Ramp Way Advertising



- **Stairway Advertising**



- **Stairway Advertising Panels**



- **Pedestrian Motion Panel Advertising**



- **Landmarks: large back-lit displays feature in prominent headwall sites located in parking facilities**



- **Facility Back Light Panels in Walkways**



- **Planter Boxes**



- **Parking Concourse Concept Walls (multi-sticker walls)**



- **Elevator Video Screen Advertising**



- **Escalator Advertising**





Viewable from multiple angles



- Digital Video Screens at Central Cashiers Locations



- Indoor Digital Advertising Billboards Network Linked to all Parking Facilities



- **Parking Facility Concourse Floor Advertising**



- **Print billboards & Creative Walls Wraps**



- **Other opportunities include: Concessions; Electronic kiosks; Projection Advertising***
*Interior wall space - Images are illuminated on the interior walls of buildings



Appendix C – 3 Tunnel and Facilities

Twin Peaks Tunnel and SFMTA Facilities – Other Advertising Opportunities

Muni Facility	Location	Est. Size (sq. ft.)
Twin Peaks Tunnel	Tunnel egress between Twin Peaks and West Portal stations	Approx. 1 mile
Kirkland Division	Block bounded by Stockton, Powell, Bay, North Point	113,437
Woods Division	22 nd and Indiana Streets	361,953
Flynn Division	15 th and Harrison Streets	268,872
Islais Creek Division	Cesar Chavez and Indiana Streets	(~8.3 acres)
Potrero Division	Mariposa between Bryant and Hampshire Streets	192,000
Presidio Division	Geary Blvd at Presidio Avenue	235,550
Green Division	San Jose Ave between Geneva & Ocean Aves	334,802
Green Annex	425 Geneva Avenue	See Green Division
Geneva Yard and Shop	Southeast corner of Geneva & San Jose Avenues	106,675
Cable Car Barn	120 Mason Street, at Washington St.	39,646
Metro East	25 th and Illinois Streets	~13 acres
Central Control	171 Lenox Way	Beneath West Portal Playground
Scott Division	Harrison Street between 15 th & Alameda Streets	31,115
Overhead Lines Facility	1401 Bryant Street	48,000
Power Control Center	2502 Alameda Street	
700 Pennsylvania	Pennsylvania Ave at 22 nd Street	88,470
Burke Avenue Facility	1570-1580 Burke Avenue	103,231
T-Line Substation	Keith Street & LeConte Ave.	48,816

Appendix C – 4 Fare and Parking Media

(Print advertising located on the backs of the following fare and parking media)

1. Cable Car Tickets
2. Passports
3. Fast Passes
4. Parking Tickets
5. Translink SmartCards
6. Residential Parking Permits



Appendix C – 5 Signage

Public Display Destination Signs (PDSS) & Above Ground Overhead Electronic Message Board

1. 108 PDSS signs at existing subway platforms (6 per platform, 2 platforms per station, 9 stations)
2. Future Central Subway Signage: 48 PDSS in total (4 underground stations, 12 per station)

Sticker PDSS Signs



3. Above Ground LCD Variable Message Board in SFMTA exclusive right of ways and or appropriately attached to other SFMTA property



Appendix C – 6 Information Kiosks



Appendix C – 7 Other Advertising Opportunities

- Travolator (Central Subway)



- Station Domination (Central Subway) or Parking Facility Domination – Includes platforms, travolators, etc.



- Platform Deck Entry-Way (Central Subway)



- **Facility Light-Boxes in Central Subway and Parking Facility Walkways**



- **Pillar Stickers**



- **Media Platform Vending Machines**



- **Station/Facility Bulkheads (future Central Subway)**



- **Ticket Gateways (Future Central Subway System)**



- **SFMTA Websites**
- **Station Benches**



- **Other non-revenue SFMTA vehicles**
- **SFMTA sales locations, including ticket booths and SFMTA Customer Service Center**

Appendix D-1

Transit Shelter Agreement

The structures covered by the Transit Shelter Agreement include all infrastructure and facilities required to be constructed, installed or maintained pursuant to the Transit Shelter Agreement including but not limited to Shelters, Kiosks, Boarding Platforms, Signal Control Covers, Transit Stop Poles, and, if required to be installed, Station Canopies and equipment installed under the Bicycle-Sharing Program (all as defined in the Transit Shelter Agreement).

Appendix D-2

MTA Advertising Policy Effective October 16, 2007

Advertising on Municipal Transportation Agency ("MTA") property, or as authorized under any contract with the MTA, constitutes a nonpublic forum. No such advertisement shall:

- be false, misleading or deceptive;
- concern a declared political candidate or ballot measure scheduled for consideration by the voters in an upcoming election, or an initiative petition submitted to the San Francisco Department of Elections;
- appear to promote the use of firearms;
- be clearly defamatory;
- be obscene or pornographic;
- advocate imminent lawlessness or violent action;
- promote alcoholic beverages or tobacco products;
- infringe on any copyright, trade or service mark, title or slogan;

In addition, all advertisements on MTA property or as authorized under any MTA contract shall include the following language: "The views expressed in this advertisement do not necessarily reflect the views of the San Francisco Municipal Transportation Agency."

Any pilot programs or experimental advertisements must be submitted and approved by the MTA Executive Director/Chief Executive Officer at least sixty (60) days prior to implementation.

This policy shall be effective upon adoption but shall not be enforced to impair the obligations of any contract in effect at the time of its approval. It shall be incorporated into any new contract for advertising on MTA property including any new contract for advertising on transit shelters effective on or after December 7, 2007.

The MTA Board of Directors reserves the right to amend this policy at any time with written notice to any affected advertising contractor.

MTA contracts granting advertising rights shall include this Policy as an attachment and must require the following:

- The contractor must comply with the advertising standards set forth in this Policy, as they may be amended from time to time.
- The contractor must display only those advertisements that are in compliance with this Policy.
- The contractor must promptly remove any advertisements that are in violation of this policy upon written demand by the MTA Executive Director/Chief Executive Officer, in conformity with state and federal law.

Appendix D-3

**SFMTA's First Supplemental Muni/BART
Joint Station Maintenance Agreement
dated July 1, 1986
with the San Francisco Bay Area Rapid Transit District (BART)**

and

**Professional Services Agreement dated as of June 12, 2008 between
BART and Titan Outdoor LLC**

**The appendices D-3 are not attached but a copy of each is available through
SFMTA's RFP contact person, Jason Gallegos at Jason.Gallegos@sfmta.com**

Appendix E
Contract Terms and Conditions
See Following Pages

**City and County of San Francisco
Municipal Transportation Agency
1 South Van Ness Avenue
San Francisco, California 94103-1267**

Agreement between the City and County of San Francisco and

[insert name of contractor]

This Agreement is made this **[insert day]** day of **[insert month]**, 2008, in the City and County of San Francisco, State of California, by and between: **[insert name and address of contractor]**, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing."

Recitals

WHEREAS, the San Francisco Municipal Transportation Agency ("SFMTA" or "Department") wishes to grant certain advertising rights on SFMTA properties; and,

WHEREAS, a Request for Proposal ("RFP") was issued on **[insert date]**, and City selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by City as set forth under this Contract; and,

Now, THEREFORE, the parties agree as follows:

1. DEFINITIONS

1.1. Advertisement. Any combination of numerals, letters, words, models, banners, emblems, insignia, symbols, devices, lights, trademarks, service marks, sounds, textures, odors or other perceptible representation intended to call attention to any person, firm, group, organization, place, commodity, product, service, business, profession, enterprise or industry.

1.2. Advertising Contract. A contract between Contractor and its advertisers, clients, customers or agents to display or distribute Advertisements on Advertising Space.

1.3. Advertising Space. Any surface or portion thereof that is subject to this Agreement and is approved by SFMTA for the placement of Advertisements.

1.4. Agreement. This contract, all referenced Exhibits to this contract, the RFP and the Proposal, in that order of precedence, all of which are incorporated by reference in this Agreement as though fully set forth.

1.5. Annual Financial Report. The report required to be submitted under Section **11.2**.

1.6. Annual Revenue Share. The amount payable to SFMTA as determined by applying the revenue share percentage listed in Table 5.1 to the Gross Revenues for the previous Fiscal Year.

1.7. Calendar Year. The period of time beginning January 1 and ending December 31 of a particular year.

1.8. Carryover Contract. Any Advertising Contract that is assigned to Contractor by City as of the Effective Date of this Agreement until the expiration of the original term of the Advertising Contract, and any Advertising Contract entered into by Contractor with an expiration date later than the termination of this Agreement.

1.9. City. The City and County of San Francisco, a municipal corporation.

1.10. Consumer Price Index, CPI. Consumer Price Index distributed by the Bureau of Labor Statistics (BLS) for the Consolidated Metropolitan Statistical Area (CMSA) covering San Francisco - Oakland - San Jose.

1.11. Contract Year. The period of time beginning July 1 and ending June 30 of a particular year.

1.12. Days. Unless otherwise specified, all references to the term "Days" refer to calendar days.

1.13. Director. The Director of Transportation of the San Francisco Municipal Transportation Agency or his or her designee.

1.14. Effective Date. [July 1, 2009].

1.15. Fiscal Year. July 1 through June 30.

1.16. Graffiti. Any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, Structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, Shelters, Kiosks, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

1.17. Gross Billings. All billings from the sale of Advertising Space or time by Contractor to its advertisers.

1.18. Gross Revenues. Total amounts received annually by Contractor in connection with the rights granted and duties performed under this Agreement.

1.19. Infrastructure. All infrastructure required to be constructed, installed or maintained pursuant to this Agreement, including but not limited to advertising display frames, displays, racks, space frames, advertising boards, projection equipment or any device that is for the purpose of displaying Advertisements.

1.20. MAG. The minimum annual guarantee payment required by Section XX of the Agreement.

1.21. Monthly Payment. An amount equal to 60% of Gross Billings for the preceding calendar month or the MAG, whichever is higher.

1.22. Party; Parties. The Parties to this Agreement are SFMTA and Contractor.

1.23. Proposal. The proposal submitted by Contractor in response to the City's Request for Proposals, dated [insert date of proposal].

1.24. Records. All documents created, received or maintained by Contractor in connection with performance under this Agreement, including, but not limited to, books, accounts, invoices, maintenance and service logs, database information, contracts, construction documents, payroll information, maintenance and service logs and other documents, whether or not kept in electronic format.

1.25. Request for Proposals, RFP. The Request for Proposals issued by the City on [date], attached hereto and incorporated by reference as though fully set forth.

1.26. San Francisco Municipal Transportation Agency; SFMTA. The Municipal Transportation Agency, an agency of the City and County of San Francisco established by San Francisco Charter Article VIIIA, or any successor agency.

1.27. Total Required Payments. The amounts that Contractor is required to pay to SFMTA pursuant to Sections 6.1.1 through 6.1.3 of this Agreement.

1.28. Vehicles. Municipal Railway diesel buses, electric trolley buses, alternative fuel buses, historic streetcars, light rail vehicles, and cable cars used for public transit.

2. TERM OF THE AGREEMENT

The term of this Agreement shall be from July 1, 2009 to June 30, 2019. The SFMTA may, in its sole discretion, exercise two five-year options to extend this Agreement to June 30, 2024 and June 30, 2029, respectively.

3. GRANT OF ADVERTISING RIGHTS AND PRIVILEGES; LIMITATIONS

3.1. Rights Granted

City hereby grants to Contractor the exclusive right to place such advertising as may be authorized from time to time by City on and in Advertising Space subject to this Agreement. The rights granted by this Section 3 are subject to the condition that Contractor, in the exercise of the rights herein granted, will make best efforts sell Advertising Space and time to advertising clients. City warrants and represents only that Contractor shall have the exclusive right to place such advertising as may be authorized under this Agreement; City does not warrant or represent that any particular level of advertising, or advertising on all available Advertising Spaces, will be permitted under this Agreement.

3.2. License Granted

In conjunction with the rights granted by this Section 3, and subject to all provisions of this Agreement and applicable law, the SFMTA grants to Contractor a license to install, maintain, repair or replace Infrastructure as necessary for the placement of advertising on Advertising Space subject to this Agreement, including Advertising Space in or on Vehicles when such vehicles are not in use, transit stations, buildings and facilities, and to access such properties for the purpose of installation, maintenance, repair or replacement of

Advertisements or Infrastructure, subject to any access restrictions communicated to Contractor in writing by SFMTA.

3.3. Rights Retained

Contractor acknowledges that City intends to, and hereby does, retain and reserve all advertising rights that are not specifically granted by this Agreement, and that City may exercise such retained and reserved rights through a source other than Contractor. The rights retained and reserved by City include, but are not limited, to:

- 3.3.1** The right to place Advertisements on any SFMTA property that is not expressly made part of this Agreement;
- 3.3.2** The right to license or otherwise provide for the use of any trade name, trademark, or other identifying device or symbol used, owned, licensed or registered by City;
- 3.3.3** The right to display poster advertisements in Muni Metro stations, except for the rights granted herein to Contractor for the sale of transit information display advertising; provided, that nothing herein shall affect any rights Contractor has as a result of any prior contractual relationship with Bay Area Rapid Transit District;
- 3.3.4** The right to install electronic information displays with advertising in the Muni Metro stations and at Muni cable car stops and terminals;
- 3.3.5** The right to grant concessionaires the authority to advertise in Muni Metro stations, and on or in items sold by them on such premises;
- 3.3.6** The right to obtain corporate sponsorships of special events and exhibitions, provided that such advertising when posted does not obstruct Contractor's advertising;
- 3.3.7** Exclusive of all commercial advertising space referred to in this Agreement, the right, at SFMTA's expense, to place on Vehicles and within transit stations and other structures related to its transit system, informative material, including, but not limited to, timetables, "take-one" brochures, service notices, additional signs and other displays designed to encourage the use of its transit system. SFMTA reserves exclusive use of all 11" x 17" frames mounted on the rear-facing side of the bulkhead panel behind the operator's position, and, in articulated Vehicles, two additional 11" x 17" frames located near the trailer portion of the Vehicle. Such informative material shall be displayed in a manner that does not interfere with Advertisements placed by Contractor. SFMTA shall not sell such space to advertisers either directly or through any intermediary; and
- 3.3.8** The right to terminate the rights to any Advertising Space granted to Contractor pursuant to this Agreement upon which no Advertisement has been displayed for a period of 60 Days. Such partial termination shall require 60 Days' written notice by SFMTA, during which time Contractor may avoid partial termination by demonstrating to SFMTA that it has sold Advertisements on the subject Advertising Space prior to the date of SFMTA's notice of partial termination, or may provide SFMTA with a copy of an Advertising Contract for that Advertising Space with a term that begins no later than the 60th Day from the date of the SFMTA's notice of partial termination.

3.4. Initially Authorized Advertising

In accordance with the exclusive advertising rights granted in this Section 3, City hereby authorizes advertising as set forth below.

3.4.1 Vehicle Advertising

SFMTA initially authorizes Contractor to use the spaces on the Vehicles listed in Exhibit A for Vehicle advertising, subject to change in the sole and exclusive discretion of Director. The City reserves the right to negotiate with the Contractor the use of other Vehicles for advertising at a future date.

(a) Vehicle Count and Description

For Vehicle advertising, subject to change in the sole and exclusive discretion of Director, City initially authorizes Contractor to use the spaces on the Vehicles listed on Exhibit A. The City reserves the right to negotiate with the Contractor the use of other Vehicles for advertising at a future date. SFMTA will provide to Contractor a "Fleet Inventory Report" at the inception of this Agreement and on or about the first day of the month following the increase or decrease of Vehicle fleet by 200 Vehicles or more.

(b) Wraps

Vehicles may be wrapped so long as side windows are not covered. All Vehicle wrap Advertisements are subject to policies adopted by the SFMTA Board of Directors regarding wrap advertising. The SFMTA currently does not have a policy on wrapping side windows of Vehicles, but may adopt such a policy during the term of this Agreement. Wrap Advertisements shall not damage the Vehicles, their paint schemes or decal applications. Contractor shall reimburse City for any damage to Vehicles by reason of the application of any wrap Advertisements.

(c) Guaranteed Space on Vehicles

In each contract month, SFMTA shall have the right to the exclusive use of no more than 15% of Advertising Spaces on the exterior of Vehicles. SFMTA retains the right to use all interior Advertising Space on each Vehicle unless Contractor has sold the space. Contractor shall install, maintain and remove interior Advertisements for the SFMTA free of charge.

3.4.2. Transit Information Displays

Contractor may utilize available Advertising Space and time on SFMTA transit information displays, including the Platform Display Sign System (PDSS). For PDSS advertising, City authorizes Contractor to use display advertisements on all PDSS equipment situated in Muni Metro stations as described below.

(a) PDSS Description

The Advertising Space available on the PDSS consists of two types of displays. The first type is an electronic display that utilizes light emitting diodes to transmit moving or flashing illuminated messages across an area that measures 2 inches by 36 inches. The second type of display is fixed and non-electrical, measuring 2 inches by 36 inches in size and occupying an opening located directly beneath the electronic display. Each PDSS unit has two such openings available for the display of fixed, non-electrical advertising.

(b) PDSS Advertising Space and Time

The electronic Advertising Space and time available on the Muni Metro PDSS will vary, since priority will be given to emergency messages, destination messages, operational messages (including, but not limited to, notices to passengers about changes in routes, schedules and fares, as well as procedures for loading and off-loading

passengers safely), and time clock information. Although City cannot guarantee that advertising messages will be displayed as scheduled, City will in good faith attempt to run all scheduled advertising messages. City shall have no liability for failure to run any such scheduled Advertisements.

(c) PDSS Equipment and Maintenance

Contractor shall maintain PDSS terminal equipment as specified by SFMTA in its San Francisco office. Contractor agrees, at its own cost and expense but using designated SFMTA personnel, to perform all maintenance work on the PDSS terminal equipment located in its offices, except to the extent said maintenance work is performed by the manufacturer pursuant to warranty. Contractor agrees to provide promptly all regular and special maintenance as specified in the PDSS owner's manual and as directed by authorized SFMTA maintenance personnel.

(d) PDSS Ownership

Contractor acknowledges City's ownership of the PDSS and all its components, and waives any right, title or interest therein. Upon termination of PDSS rights granted hereunder and within 24 hours after request by City, Contractor agrees to return the PDSS terminal equipment and all its components to City in the same condition as when received, ordinary wear and tear excepted. If Contractor is unable to return the PDSS terminal equipment and all components to City in the same condition as received, ordinary wear and tear excepted, Contractor shall pay to City an amount equal to the cost of obtaining new replacement equipment, and Contractor may keep the original equipment.

3.5. Unsold Space

3.5.1. City's Use of Unsold Space

By the first day of each month, Contractor shall provide a projection of all unsold Advertising Space anticipated over the next 60 Days to SFMTA in an electronic format. Notwithstanding the provisions of Section 3 of this Agreement, the City has the first option to use, for a minimum of 14 Days, any Advertising Space, at no charge to the City and for any public purpose, that has not been sold by Contractor. The City will be responsible for providing all printed posters ready for posting by Contractor. The SFMTA shall notify Contractor of the City's intention to use the unsold Advertising Space at least 30 Days prior to the date on which the City's use would begin. If Contractor is unable to deliver unsold Advertising Space for any reason after being notified of the City's intention to use unsold Advertising Space, and if the printed materials are time sensitive and cannot be reused, Contractor shall reimburse the City for all printing and design costs expended in anticipation of the City's use of that Advertising Space.

3.5.2. Contractor's Use of Unsold Space

To the extent that the City does not exercise its option to use unsold Advertising Space in accordance with Section 3.5.1, Contractor may use, at its sole cost and expense, available unsold Advertising Space: 1) for its own advertisements and promotion designed to increase the sale of Advertising Space, or 2) to display public service announcements provided by non-profit public, educational, and charitable organizations.

3.5.3. Trades, Discounts and Space or Time Bonuses

Contractor may barter or trade Advertising Space and/or time on unsold Advertising Space or time under the following conditions:

(a) Contractor must secure the prior written approval of the Director for each barter or trade.

(b) Contractor is prohibited from receiving compensation for such transactions except as otherwise expressly authorized by this Agreement.

(c) No Advertising Space or time bonus, discount or allowance shall be permitted without the prior written approval of the Director unless all the following conditions are met:

(i) The transaction must result in a direct financial benefit to SFMTA, and may not relate in any way to the sale of advertising on or with other transit systems or properties;

(ii) Contractor is prohibited from receiving any consideration or commission for any such Advertising Space or time bonus, discount or allowance other than payments from which City receives a cash percentage in accordance with Section 6 of this Agreement;

(iii) Each such space or time bonus, discount or allowance, together with the term and/or schedule of display, shall be clearly itemized with appropriate footnotes in Contractor's Advertising Contracts or on an equivalent form approved by the Director.

SFMTA may actively solicit trades, and Contractor shall cooperate with SFMTA in any such endeavor.

3.5.4. Public Service Announcements

Contractor shall have the right, at its own discretion, to display certain public, educational, charitable and editorial displays free of charge or at reduced rates in any Advertising Spaces not contracted for use by paid advertisers and not being used by the SFMTA or Contractor pursuant to this Section 3. In the event that Contractor collects revenues hereunder solely to cover direct costs for labor and materials for carding, installation, maintenance, and removal of such displays, such amounts shall not be included in the Gross Billings used to compute the percentage payment. Such freely donated or discounted advertising shall not, however, reduce the MAG payments hereunder.

3.5.5. Advertising Space Subject to Change

Contractor acknowledges and agrees that the available Advertising Space may vary from time to time for various reasons.

3.5.6. Transportation Priority

Contractor acknowledges and agrees that advertising, and the grant of advertising rights provided for in this Agreement, are incidental to the SFMTA's transportation business, which may undergo changes affecting the advertising rights granted. SFMTA will have no liability to Contractor for any change in its routes, in the number of transit vehicles operated by it, in ridership, or for any other change affecting the level or scope of advertising authorized by SFMTA.

3.5.7. Use of Advertising Space

Contractor may not use Advertising Space for any purpose other than those expressly provided in this Agreement.

3.5.8. No Damage to City Property

Contractor and its subcontractors may not damage City property. The use of exterior advertising display frames or similar hardware and adhesive decals such as "Control-TAC" or its equivalent shall not damage the paint schemes or decal applications of Vehicles, or any surface of any Advertising Space. If in the course of its activities under the Agreement Contractor or any of its employees or subcontractors damages any property belonging to City, Contractor shall compensate the City for the full extent of its losses resulting from the damage. At City's option, City may require Contractor to repair any such damage.

3.5.9. Nuisances

Contractor shall conduct its activities under this Agreement in a manner that does not constitute waste, nuisance or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises or lights) to City, or to the public.

4. OWNERSHIP, INSTALLATION AND MAINTENANCE

4.1. Installation and Ownership Rights

Contractor, at its own expense, shall:

4.1.1. Furnish all new Infrastructure of the size currently in use, or of a size and type as may be agreed upon by City and Contractor, as is required either to replace presently existing Infrastructure, to add to the existing Infrastructure or to construct new Infrastructure in new locations. Contractor shall reimburse City for any such Infrastructure installed at City's expense by a factory supplier of new or rebuilt vehicles or other supplier. Contractor hereby acknowledges and agrees that City owns and has full title to any and all Infrastructure including, but not limited to, that which is now or hereafter affixed to any Vehicle or any other SFMTA property subject to this Agreement.

4.1.2. Place all Advertisements in a clean, safe, and first-class condition, and shall maintain or replace Advertisements as needed.

4.1.3. Erect all Infrastructure and insert all Advertisements in accordance with any schedule approved by SFMTA, or if no schedule is approved, whenever possible at hours of minimum passenger, visitor and employee activity within SFMTA facilities.

4.2. Maintenance

Contractor shall continuously maintain Infrastructure in a clean, safe, and first-class condition during the entire term of this Agreement, and shall maintain or replace all Infrastructure as needed.

4.3. Inspection and Clean-up

Contractor must inspect each Advertisement at least once per week. Contractor shall make more frequent inspections if conditions warrant. In the course of each inspection of an Advertisement, Contractor shall remove all Graffiti, stickers, posters, dust and dirt from each Advertisement.

4.4. Repair

Except as otherwise provided in this Section, within 48 hours of notification by the public or by City or discovery by Contractor, Contractor shall repair any damage, including, but not limited to, damage from vandalism or Graffiti, found on any Advertisement or advertising Infrastructure. Contractor shall repair, replace or remove, as appropriate, any damage to an Advertisement or Infrastructure that is of a hazardous nature,

4.5. Removal of Advertisements

Contractor agrees to remove Advertisements as expeditiously as practical after the expiration of each Advertising Contract, and in no event later than 30 Days after expiration of any such Advertising Contract, so that no continuation or over posting of such Advertising Contract results in any loss of revenues to be generated under this Agreement except as provided for in Section 3.5.3.

4.6. Use of City Forces

If City at any time should elect to perform installation and maintenance and repair responsibilities through its own personnel on a permanent basis, then the Contractor will assign those responsibilities to City within 60 Days after the SFMTA has given written notice of such election. In that event, in addition to all other payments required hereunder, Contractor shall pay City at the time of the annual reconciliation the lower of (1) City's actual labor, materials and administrative costs for performing such installation and maintenance responsibilities for the Contract Year, or (2) Contractor's installation and maintenance costs for the last 12-month period during which Contractor performed these activities.

4.7. Maintenance Plan

Contractor shall perform maintenance in accordance with the standards of this Agreement and the terms of the maintenance and installation plan attached as Exhibit [TBD].

4.8. Remedies for Failure to Maintain or Repair

In the event that Contractor fails to repair or maintain Advertisements within the time specified by SFMTA, SFMTA may, in its sole discretion, cause the repair or maintenance of said Advertisements or Infrastructure. Contractor shall pay SFMTA for its actual costs, including overhead costs, within 10 Days following receipt by Contractor of an invoice.

5. CONTENT OF ADVERTISEMENTS

5.1. Advertising Policy

The SFMTA Board of Directors has adopted an Advertising Policy that prohibits certain types of advertisements. See Exhibit [TBD]. The Contractor agrees to comply with the advertising standards set forth in this policy. The SFMTA Board of Directors may unilaterally amend the policy, and SFMTA will provide to Contractor notice of any such amendments. Contractor is permitted to display only those Advertisements that are in compliance with SFMTA's policy. Upon written demand by the Director, Contractor agrees to promptly remove any Advertisements that are in violation of SFMTA's policy to the extent permitted by state or federal law.

5.2. Disclaimers

Contractor shall install a decal on each Advertisement that reads: "The views expressed in any advertisement do not necessarily reflect the views of the Municipal Transportation Agency." SFMTA will provide the decals and determine the locations on the vehicles where the decals shall be placed.

5.3. Complaints

Contractor shall install a decal on each Advertisement indicating that a member of the public may dial 3-1-1 to report any complaint about the physical condition of the Advertisement. The design of the decal and the location of the decal on the Advertisement will be subject to the prior approval of City. Each decal must provide unique identifying information for the Advertisement for the purpose of easy identification of the Advertisement that is the subject of a complaint or report. Current decals shall be replaced as needed to ensure accuracy and readability.

5.4. Design Considerations and Use of Materials

5.4.1. General Considerations

It is the intent of both City and Contractor to provide an advertising program that is effective and aesthetically pleasing and that will be beneficial to both Parties. The parties accordingly agree (A) to maintain throughout the term of this Agreement a continual liaison and exchange of plans and information to assure the successful implementation of the Agreement, and (B) to use materials and technology presently available or subsequently developed for all exterior and interior Advertisements that will enhance the appearance and image of SFMTA Vehicles, transit system and facilities and that will not detract from the transit system's color scheme and logo or damage the surface of Advertising Spaces, including the Vehicles' paint scheme or decal applications. City shall have the right to determine the number, type, and method of attachment and location of all advertising Infrastructure.

5.4.2. Experimental Displays

Contractor may experiment with new advertising materials, displays and designs whenever possible. SFMTA and Contractor shall coordinate on the type and extent of such experimental projects, and their schedule and term; however, Contractor shall not proceed with such experimental projects until authorized by SFMTA. During the term of these projects, the sales and inventory value of such experimental displays shall not be used to recalculate the MAG, unless and until the SFMTA authorizes any such display on a non-experimental basis. Revenue from these displays may, however, be used as a credit towards meeting the MAG.

5.4.3. Cable Car Displays

All advertising on cable cars shall be in conformity with the character, style, and design of such Vehicles, and be subject to the approval of the Director.

6. PAYMENTS

6.1. Payments by Contractor to City

During the term of this Agreement, Contractor shall pay to City the amounts listed below, without any deduction or offset whatsoever. Payments shall be made electronically in accordance with wiring or other remittance instructions provided in writing by City.

6.1.1. Administrative Payments

No later than 30 Days after the Effective Date and no later than July 1 of each year thereafter during the term of the Agreement, Contractor shall pay SFMTA a minimum of \$500,000 ("base rate"), as escalated each year by the percentage change in the most recently published 12 month average CPI.

6.1.2. Marketing Support

No later than 30 Days after the Effective Date and no later than July 1 each year thereafter during the term of the Agreement, Contractor shall contribute \$250,000 to the SFMTA, plus \$400,000 in media and/or services, either provided directly to the SFMTA or purchased for the use of the SFMTA, as escalated each year by the percentage change in the most recently published 12 month average CPI of the Bay Area.

6.1.3. Minimum Annual Guarantee (MAG)

Based on the minimum Gross Revenues in the previous Fiscal Year, Contractor shall pay to the SFMTA, in 12 equal installments due on the first business day of each month, the greater of:

- (a) The MAG amount set forth in Table 6.1.3 below; or
- (b) 60% of the Contractor's annual gross revenues earned in connection with the rights to advertise provided in the contract.

Contractor shall pay the MAG amount unless the Gross Revenues in the previous fiscal year meet or exceed the amounts set forth in Table 6.1.3.

Table 6.1.3: MAG Amount and Revenue Share Percentage

Fiscal Year	MAG	Revenue Share
2009-10		<u>60%</u>
2010-11		<u>60%</u>
2011-12		<u>60%</u>
2012-13		<u>60%</u>
2013-14		<u>60%</u>
2014-15		<u>60%</u>
2015-16		<u>60%</u>
2016-17		<u>60%</u>
2017-18		<u>60%</u>
2018-19		<u>60%</u>
2019-20*		<u>60%*</u>
2020-21*		<u>60%*</u>
2021-22*		<u>60%*</u>
2022-23*		<u>60%*</u>
2023-24*		<u>60%*</u>
2024-25*		<u>60%*</u>
2025-26*		<u>60%*</u>
2026-27*		<u>60%*</u>
2027-28*		<u>60%*</u>
2028-29*		<u>60%*</u>
<u>Total</u>		
*Assumes that the option(s) to extend the contract are exercised by the SFMTA		

6.1.4. Annual Revenue Share

By **[July 1]** of each year, Contractor shall provide the SFMTA with documentation of its Gross Revenues and Total Required Payments for the previous Fiscal Year as part of the Summary Report required by Section 8.2. Contractor shall apply the revenue share percentage designated in Table 6.1.3 above to the Gross Revenues for the previous Fiscal Year to determine the SFMTA's annual revenue share. If the annual revenue share exceeds the Total Required Payments made to the SFMTA pursuant to subsections 6.1.1 through 6.1.3, Contractor shall pay the SFMTA any difference between the Total Required Payments made and the annual revenue share by **[July 1]**. In the event this Agreement terminates for any reason before the completion of a Fiscal Year, Contractor shall submit the documentation required by this subsection and any final payment required by this subsection within 60 Days of termination.

6.2. Late Payments

Payments from Contractor that are not paid when due will bear interest compounded daily from and after the date said payment was due until the date paid at the prime rate plus three percent. Acceptance of a late payment by SFMTA will not constitute a waiver of Contractor's default with respect to the overdue amount, nor prevent SFMTA from exercising any of the other rights and remedies granted under this Agreement or by law. SFMTA shall have no responsibility to notify Contractor of payments not received by the due dates.

6.3. Verification of Revenue

In each Contract Year covered by this Agreement, a verification of sales and revenues reported to City by Contractor shall be made by a certified public accounting firm selected by City. City may assign the verification function to the Audits Division of the San Francisco Controller's Office. The cost of such verification shall be shared equally by City and Contractor. If it is determined as a result of any such verification that there has been a deficiency in percentage payments as required by this Agreement, then such deficiency shall become immediately due and payable with interest at 10%, or the maximum lawful rate, whichever is higher, from the date when said payment should have been made. If Contractor's accounting reports for any contract month shall be found to have understated Gross Billings or revenue by more than 2% and City is entitled to any additional percentage payment as a result of said understatement, then Contractor shall pay, in addition to the interest charges above, all of the costs and expenses of such audit.

7. CARRYOVER CONTRACTS

7.1. Beginning of Term

As of the Effective Date of this Agreement, SFMTA will transfer to Contractor the rights to all Carryover Contracts it has acquired from CBS Outdoor, Inc., along with copies of those Contracts. Following such transfer, Contractor shall pay to CBS Outdoor, Inc., when and as received from the advertisers, 20% of the gross income received from such Carryover Contracts for a period of no greater than 180 Days following the Effective Date of this Agreement. Contractor agrees that CBS Outdoor, Inc. is a third party beneficiary with a right to enforce against Contractor only the payment obligation imposed by this Section 7.

7.2. End of Term

The Parties agree that under limited circumstances, it might be advantageous both to City and to Contractor to permit Contractor, during the term of this Agreement, to enter into Carryover Contracts. Contractor shall not enter any contracts related to performance under this Agreement that extend beyond the termination date of this Agreement without written approval from the City. Contractor shall immediately assign and transfer, and does assign and transfer, to SFMTA any Carryover Contract in effect upon expiration of this Agreement, and such Carryover Contracts thereupon shall become the property of SFMTA. Following such transfer, City (or City's

designee) shall pay to Contractor, when and as received, 20% of the gross income received from such Carryover Contracts except when said gross income is received (A) from a Carryover Contract that has expired and been renewed, or (B) more than 180 Days following expiration of this Agreement.

City shall not be responsible for payment to Contractor of Contractor's portion of the gross income after City assigns the Carryover Contracts to a designee provided that the designee makes Contractor a third party beneficiary with a right to enforce the payment obligation against the designee. Contractor agrees that the existence of any Carryover Contract will not in any way extend the term of this Agreement. Contractor agrees that it will use its best efforts in good faith to enter into advertising contracts and maximize revenues until the final day of the Agreement.

8. REPORTS, INSPECTION AND REVIEWS

8.1. Annual Financial Statement

On or before the first day of the third calendar month following the close of Contractor's fiscal year, Contractor shall submit to City three copies of Contractor's annual financial statement prepared by an independent public accountant.

8.2. Summary Report

On or before the first day of the third calendar month following the close of Contractor's fiscal year, Contractor shall submit to City a Summary Report detailing total Advertisement sales, revenues, expenditures, documentation of Gross Revenues and Total Required Payments for the previous Fiscal Year, and the number of Advertising Contracts by type of Advertising Space.

8.3. Annual Inspection of Records

By September 1 for the City's prior Fiscal Year, Contractor shall make available at its place of business in San Francisco or the surrounding area for inspection by City of the following information:

8.3.1. The total revenues, earnings before income tax, depreciation, amortization and profit from advertising operations, both on a cash and accrual basis.

8.3.2. Comparable financial information and statistics relating to Contractor's advertising contracts for transit vehicles with other public or transit agencies in the Bay Area or other large metropolitan areas.

8.4. Sales Activity Report

A "Sales Activity Report" on the form attached hereto as **Exhibit B, Item (1)**, or an equivalent form approved by Director shall be prepared by Contractor and submitted to the Director on or before the 20th day of the following month.

8.5. Account Activity Summary by Display Location and Type

An "Account Activity Summary by Display Location and Type," on the form attached hereto as **Exhibit B, Items (2) and (3)**, or an equivalent form as approved by the Director, shall be prepared monthly by Contractor and submitted to the Director on or before the 20th day of the following month. This summary shall include the following:

8.5.1. Advertising by Category

A percentage allocation of Gross Billings by Contractor's top five categories of advertisements (e.g., fashion, automotive, media, and beverage) and three categories of advertising clients. The three client categories shall be (1) commercial- national accounts; (2) commercial/local accounts; and (3) other accounts. SFMTA may request new or additional categories during the term of this Agreement.

8.5.2. Bay Area-Wide Transit Contracts

If Contractor represents other transit properties in the San Francisco Bay Area (defined by the U.S. Bureau of Census as the San Francisco-Oakland and the San Jose Standard Metropolitan Statistical Areas), any Advertising Contract written for Bay Area-wide distribution and posting shall be identified as such on the face of such Advertising Contract. For all such Advertising Contracts, Contractor shall supply City with the amount of total billings, as well as the percentage of total billings allocated to City and the other transit properties.

8.5.3. Copies of Contracts

On or before the twentieth (20th) day of each month, Contractor shall submit to SFMTA, on a form equivalent to **Exhibit B-4**, a copy of each Advertising Contract billed by the Contractor during the preceding month. On each such Contract, Contractor shall indicate the account type of each advertiser (*i.e.*, commercial-national; commercial-local; SFMTA/City; or non-profit public service announcement), and if the sale is for Bay Area-wide distribution, the allocation to SFMTA and the other Bay Area transit properties.

8.5.4. Maintenance and Service Logs

Contractor shall maintain accurate electronic maintenance and service logs describing the dates and locations of all routine inspections conducted of Advertisements, Infrastructure and Advertising Spaces as required by this Agreement, as well as the date, the location and the nature of any maintenance or service activity conducted by Contractor. If the maintenance or service is conducted in response to a complaint by the public, the log shall include the date and the nature of the complaint to which the Contractor has responded.

8.5.5. Client/Campaign Report

For each new client and for each advertising campaign for a new or existing client, Contractor shall provide a report detailing the location(s) of the campaign, the type(s) of Advertising Space and Advertisements to be utilized, and photographs of the Advertisements after they are placed.

8.5.6. Media Trade Reports

Contractor shall supply SFMTA with quarterly reports of media trade transactions authorized by Section 3.5.3 showing:

- (a) the cumulative total of consideration received for barter or trades received by City since contract inception through the end of the previous quarter;
- (b) A list of new trade offers for the quarter, showing amounts accepted by the City.

8.5.7. Schedule of Rates and Charges

On or before the first business day of each Calendar Year, Contractor shall provide to SFMTA a complete "Schedule of Rates and Charges" for all advertising charges under this Agreement, together with a similar schedule of rates for any other San Francisco Bay Area transit system for which Contractor has a transit

advertising agreement. Each such schedule shall include a range (minimum and maximum) of all standard rates and charges for each type of Advertising Space and time available for rental, all time and quantity purchase discounts, discounted rates and charges for civic, charitable, non-profit and public service organizations, all fees and direct costs for labor and materials for carding, installation, maintenance, and removal of advertising, and terms, conditions and manner of payment by advertisers. Any changes in rates and charges during the Contract Year shall be submitted in writing to the SFMTA, not later than 15 days from the effective date of such change. In the event of any dispute relating to rates and charges, such dispute shall be resolved by the Director, whose decision shall be final and conclusive, unless arbitrary and capricious.

9. SUBMITTING FALSE CLAIMS; MONETARY PENALTIES

Pursuant to San Francisco Administrative Code § 21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

10. TAXES

10.1. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

10.2. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

10.2.1. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

10.2.2. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code Section 480.5, as amended from time to time, and any successor provision.

10.2.3. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code Section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

10.2.4. Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

11. QUALIFIED PERSONNEL

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement. Contractor shall provide an experienced local sales force with the capability to acquire national advertising accounts, and adequate production personnel to assure the utmost in design, construction, placement and maintenance of Advertisements and Infrastructure, as well as a fully staffed business office in San Francisco.

12. RESPONSIBILITY FOR EQUIPMENT

City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

13. INDEPENDENT CONTRACTOR

Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

14. PAYMENT OF TAXES AND OTHER EXPENSES

Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts

equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. INSURANCE; BONDING; SECURITY DEPOSIT

15.1. Requirement to Provide Financial Guarantees

Upon the Effective Date of this Agreement, Contractor shall provide, and shall maintain for the time periods specified herein, financial instruments and funds described in this Section 15 as security to ensure Contractor's performance of all terms and conditions of this Agreement and to compensate for any damage to City property and/or other actual costs to City for Contractor's violation of the terms of this Agreement, as further described below.

15.2. Performance Bond

15.2.1. Amount of Bond

Contractor agrees that within five Days after notification from the SFMTA that the all required City agencies have approved this Agreement, Contractor will deliver to the City a performance bond, which may be renewable annually, in the amount of \$7,000,000 to guarantee Contractor's performance obligations under this Agreement. If Contractor fails to deliver the initial performance bond within five Days, or fails to notify City annually of the renewal of the bond within five Days before each anniversary of the Effective Date, City will be entitled to cancel this Agreement. Contractor shall maintain the performance bond during the term of this Agreement. In the event this Agreement is assigned, as provided for in Section 30, City will return or release the performance bond not later than the effective date of the assignment, provided that the assignee has delivered to City an equivalent performance bond, as determined by City. Notwithstanding anything to the contrary herein, in no event shall Surety's aggregate liability exceed the penal sum of the applicable bond amount; provided, however, that this limitation shall not affect Contractor's liability under this Agreement.

15.2.2. Extensions of Agreement

If the SFMTA exercises the option to extend the Agreement as provided in Section 2, then no later than the first Day of the extended term Contractor must provide a performance bond in the amount of \$10,000,000 for the duration of any extension of the term of this Agreement.

15.2.3. Sureties

Bonding entities on the performance bond must be legally authorized to engage in the business of furnishing performance bonds in the State of California. All bonding entities must be satisfactory to City. During the period covered by the Agreement, if any of the sureties upon the bond become insolvent or, in the opinion of the City, unable to pay promptly the amount of such bond to the extent to which the surety might be liable, Contractor, within 30 Days after notice given by the City to Contractor, must by supplemental bond or otherwise, substitute another and sufficient surety approved by City in place of the surety becoming insolvent or unable to pay. If Contractor fails within such 30 Day period to substitute another and sufficient surety, City may deem Contractor to be in default in the performance of its obligations hereunder and upon the said bond. The City, in addition to any and all other remedies, may terminate the Agreement or bring any proper suit or proceeding against moneys then due or which thereafter may become due to Contractor under the Agreement. The amount for which the surety will have justified on the bond and the moneys so deducted will be held by SFMTA as collateral for the performance of the conditions of the bond.

15.3. Letter of Credit

15.3.1. Requirements

In addition to the performance bond, within 14 Days after receiving notification from the SFMTA that the all required City agencies have approved this Agreement, Contractor shall provide to City and shall maintain, throughout the term of this Agreement and for 90 Days after the expiration or termination of this Agreement or the conclusion of all of Contractor's obligations under the Agreement, whichever occurs later, a confirmed, clean, irrevocable letter of credit in favor of the City and County of San Francisco, a municipal corporation, in the amount of \$3,000,000. The letter of credit must have an original term of one year, with automatic renewals of the full amount throughout the term of the Agreement. If Contractor fails to deliver the letter of credit as required, City may deem Contractor to be in default in the performance of its obligations hereunder. City, in addition to all other available remedies, may terminate the Agreement. The letter of credit must provide that payment of its entire face amount, or any portion thereof, will be made to City upon presentation of a written demand to the bank signed by the Director of Transportation of the San Francisco Municipal Transportation Agency on behalf of the City and County of San Francisco.

15.3.2. Financial Institution

The letter of credit must be issued on a form and issued by a financial institution acceptable to the City in its sole discretion, which financial institution must (a) be a bank or trust company doing business and having an office in the City and County of San Francisco, (b) have a combined capital and surplus of at least \$25,000,000, and (c) be subject to supervision or examination by federal or state authority and with at least a Moody's A rating.

15.3.3. Extensions of Agreement

If the SFMTA exercises the option to extend the Agreement as provided in Section 2, then no later than the first Day of the extended term Contractor must provide a new letter of credit in the amount of \$5,000,000 for the duration of any extension of the term of this Agreement.

15.3.4. Demand on Letter of Credit

The letter of credit will constitute a security deposit guaranteeing faithful performance by Contractor of all terms, covenants, and conditions of this Agreement, including all monetary obligations set forth herein. If Contractor defaults with respect to any provision of this Agreement, SFMTA may make a demand under the letter of credit for all or any portion thereof to compensate City for any loss or damage that they may have incurred by reason of Contractor's default, negligence, breach or dishonesty. Such loss or damage may include

without limitation any damage to or restoration of City property or property that is required to be constructed, maintained or repaired pursuant to this Agreement, payments to City, and claims for liquidated damages; provided, however, that City will present its written demand to said bank for payment under said letter of credit only after City first has made its demand for payment directly to Contractor, and five full Days have elapsed without Contractor having made payment to City. Should the City terminate this Agreement due to a breach by Contractor, the City shall have the right to draw from the letter of credit those amounts necessary to pay any fees or other financial obligations under the Agreement and perform the services described in this Agreement until such time as the City procures another contractor and the agreement between the City and that contractor becomes effective. City need not terminate this Agreement in order to receive compensation for its damages. If any portion of the letter of credit is so used or applied by City, Contractor, within 10 business days after written demand by City, shall reinstate the letter of credit to its original amount; Contractor's failure to do so will be a material breach of this Agreement.

15.3.5. Expiration or Termination of Letter of Credit

The letter of credit must provide for 60 Days' notice to City in the event of non-extension of the letter of credit; in that event, Contractor shall replace the letter of credit at least 10 business Days prior to its expiration. In the event the City receives notice from the issuer of the letter of credit that the letter of credit will be terminated, not renewed or will otherwise be allowed to expire for any reason during the period from the commencement of the term of this Agreement to 90 Days after the expiration or termination of this Agreement, or the conclusion of all of Contractor's obligations under the Agreement, whichever occurs last, and Contractor fails to provide the City with a replacement letter of credit (in a form and issued by a financial institution acceptable to the City) within 10 Days following the City's receipt of such notice, such occurrence shall be an event of default, and, in addition to any other remedies the City may have due to such default (including the right to terminate this Agreement), the City shall be entitled to draw down the entire amount of the letter of credit (or any portion thereof) and hold such funds in an account with the City Treasurer in the form of cash guarantying Contractor's obligations under this Agreement. In such event, the cash shall accrue interest to the Contractor at a rate equal to the average yield of Treasury Notes with one-year maturity, as determined by the Treasurer. In the event the letter of credit is converted into cash pursuant to this paragraph, upon termination of this Agreement, Contractor shall be entitled to a full refund of the cash (less any demands made thereon by the City) within 90 Days of the termination date, including interest accrued through the termination date.

15.3.6. Return of Letter of Credit

The letter of credit will be returned within 90 Days after the end of the term of this Agreement, provided that Contractor has faithfully performed throughout the life of the Agreement, Contractor has completed its obligations under the Agreement, there are no pending claims involving Contractor's performance under the Agreement and no outstanding disagreement about any material aspect of the provisions of this Agreement. In the event this Agreement is assigned, as provided for in Section 30, City will return or release the letter of credit not later than the effective date of the assignment, provided that the assignee has delivered to the City an equivalent letter of credit, as determined by City.

15.3.7. Excessive Demand

If City receives any payments from the aforementioned bank under the letter of credit by reason of having made a wrongful or excessive demand for payment, City will return to Contractor the amount by which City's total receipts from Contractor and from the bank under the letter of credit exceeds the amount to which City is rightfully entitled, together with interest thereon at the legal rate of interest, but City will not otherwise be liable to Contractor for any damages or penalties.

16. INSURANCE

16.1. Without in any way limiting Contractor's liability pursuant to the "Indemnification" Section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

16.1.1. Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

16.1.2. Comprehensive General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Advertising Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations; and

16.1.3. Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

16.2. Comprehensive General Liability and Commercial Automobile Liability Insurance policies must provide the following:

16.2.1. Name as Additional Insured the City and County of San Francisco and the San Francisco Municipal Transportation Agency, and their officers, agents, and employees.

16.2.2. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

16.3. All policies shall provide thirty (30) days' advance written notice to City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Such notices shall be sent to the following address:

**Director of Transportation
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 7th Floor
San Francisco, CA 94103**

with a copy to:

**Real Estate Division
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 7th Floor
San Francisco, CA 94103**

16.4. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

16.5. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

16.6. In the event of the breach of any provision of this Section on "Insurance," or in the event any notice is received which indicates any required insurance coverage will be diminished or cancelled, the Director shall have the option, notwithstanding any other provision of this Agreement to the contrary and in addition to other remedies provided for in this Agreement, immediately to declare a material breach of this Agreement and to suspend the further exercise by Contractor of all rights and privileges granted to Contractor under to this Agreement until such time as the Director determines that the required insurance has been restored to full force and effect and that all premiums have been paid for a period satisfactory to the Director.

16.7. Prior to the Effective Date and annually thereafter on the anniversary of the Effective Date Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above.

16.8. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

16.9. Upon City's request, Contractor shall provide satisfactory evidence that Contractor has adequately provided for Social Security and Unemployment Compensation benefits for Contractor's Employees.

16.10. Contractor shall comply with the provisions of any insurance policy covering Contractor or the City, and with any notices, recommendations or directions issued by any insurer under such insurance policies so as not to adversely affect the insurance coverage.

17. INDEMNIFICATION

Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in

consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

18. INCIDENTAL AND CONSEQUENTIAL DAMAGES

Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

19. LIABILITY OF CITY

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

20. LIQUIDATED DAMAGES

20.1. Performance Standards

By entering into this Agreement, Contractor agrees that in the event Contractor fails to perform in accordance with the performance standards listed below, City will suffer actual damages that will be impractical or extremely difficult to determine. Contractor agrees that the amounts listed in **this** Section 20.1 are not penalties, but are reasonable estimates of the loss that City will incur based on the delay or non-performance, established in light of the circumstances existing at the time this contract was awarded.

20.1.1. Maintenance Breaches. City may assess liquidated damages for the following breaches of the maintenance and repair provisions of this Agreement:

(a) Failure to perform maintenance or repair work required to be performed within 24 hours of notification: \$1,000 per occurrence per Day until the violation is remedied. The date of notification will be the earliest date of notification, as determined from records of notices received by Contractor under Section 4.4 of this Agreement.

(b) Failure to perform maintenance or repair work required to be performed within 48 hours of notification: \$500.00 per occurrence per Day until the violation is remedied. The date of notification will be the earliest date of notification, as determined from records of notices received by Contractor under Section 4.4 of this Agreement.

(c) Failure to remove Graffiti in accordance with the requirements of this Agreement within 48 hours of notification or discovery: \$500.00 per occurrence per Day until the violation is remedied. The date of notification will be the earliest date of notification, as determined from records of notices received by Contractor under Section 4.4 of this Agreement. The date of discovery shall be deemed to be the day scheduled for Contractor's most recent regular inspection.

20.1.2. Annual Report. Contractor's failure to submit any report with all required information, will subject Contractor to liquidated damages in the amount of \$500.00 for each Day the report is late continuing until the report has been submitted with all required information.

20.1.3. Failure to Cure Audit Deficiencies. In the event that Contractor fails to cure an audit deficiency within the time periods imposed by the City under Section 28.4, City may impose liquidated damages not to exceed \$500 per Day per deficiency until the deficiency is cured to the satisfaction of the City.

20.1.4. Failure to Comply with Advertising Policy. In the event that Contractor fails to comply with the SFMTA's advertising policy, the City may impose liquidated damages in the amount of \$5,000.00 per Day if the Contractor fails to cure the violation within two Days. For purposes of this Section, a "violation" is a failure to comply in the context of a single advertisement.

20.2. Contractor's Default

In the event of any default resulting in termination, the Parties agree that due to the nature of the breach, City's actual damages would be impracticable and extremely difficult to determine, and that City shall be entitled to the immediate payment of the sum of \$1,500,000 as liquidated damages to compensate the City for actual damages suffered as a result of Contractor's default. Contractor agrees that the amount listed in this Section 20.2 is not a penalty, but is a reasonable estimate of the loss that City will incur based on the termination for default, established in light of the circumstances existing at the time this contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's default that results in termination of this Agreement.

20.3. Failure to Pay Liquidated Damages

Contractor agrees that if it fails to remit liquidated damages amounts assessed by City under this Section 20 or under any other section of this Agreement, City may deduct such damages from Contractor's letter of credit provided under Section 15.3 above. Contractor shall restore the letter of credit to its full amount in accordance with Section 15.3.4. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's default failure to perform this Agreement in compliance with specified performance standards.

21. DEFAULT; REMEDIES

21.1. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

21.1.1. Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 9, 10, 15, 16, 24, 30, 33, 36, 46, or 49.

21.1.2. Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from City to Contractor.

21.1.3. Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.

21.1.4. A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of

Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

21.2. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement with 30 Days' written notice, or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

21.3. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

21.4. The SFMTA may partially terminate the rights to any Advertising Space granted to Contractor pursuant to this Agreement upon which no Advertisement has been displayed for a period of 60 Days. Such partial termination shall require 60 Days' written notice by SFMTA, during which time Contractor may avoid partial termination by demonstrating to SFMTA that it has sold Advertisements on the subject Advertising Space prior to the date of SFMTA's notice of partial termination, or may provide SFMTA with a copy of an Advertising Contract for that Advertising Space with a term that begins no later than the 60th Day from the date of the SFMTA's notice of partial termination.

22. TERMINATION FOR CONVENIENCE

The City may terminate this Agreement in whole, or from time to time part, whenever the Director shall determine that such termination is in the best interest of the City. Any such termination shall be effected by delivery to Contractor of a notice of termination specifying the extent to which the Agreement is terminated and the date on which termination becomes effective. After receipt of a notice of termination, Contractor shall (i) stop performance under this Agreement on the date and to the extent specified in such notice, (ii) enter into no additional Advertising Contract relating to Contractor's rights and interests under the portion of the Agreement terminated, (iii) assign to the City in the manner, at the times, and to the extent directed by the Director, all of the right, title, and interest of the Contractor under Advertising Contracts and subcontracts identified by the Director and related to the rights and interests terminated, and terminate all other contracts and subcontracts related to such rights or interests; and (iv) within 30 Days' of the notice of termination, submit to the Director a statement of all outstanding liabilities and claims arising out of such termination of subcontracts, together with such information as may be required by the Director to evaluate such liabilities and claims. The determination of the Director on such liabilities and claims shall be administratively final.

23. RIGHTS AND DUTIES UPON TERMINATION OR EXPIRATION

23.1. If Contractor does not cure an Event of Default within 30 Days from the date of a notice of termination, City may terminate this Agreement and assume all Advertising Contracts. Termination of this Agreement by City shall not affect the obligations of the Contractor or the rights of City that accrued prior to such termination, except that as of the date of termination Contractor thereafter shall no longer be entitled to any revenues whatsoever from Advertising Contracts then in force.

23.2. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 9, 10, 12, 13, 16 through 18, 24, 26, 27, 40 through 44, 47, 49.

23.3. Any and all Advertisements that have been placed in Advertising Spaces as of the date of termination of this Agreement shall become the property of City and, at City's discretion, may remain on or in the Advertising Spaces, and Contractor shall not be entitled to possession of such materials. Contractor agrees to execute all documents necessary to give effect to this Section.

23.4. To the extent that this Agreement is terminated prior to expiration of the term specified in Section 2, this Agreement or the terminated portion of the Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

24. CONFLICT OF INTEREST

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

25. PROPRIETARY OR CONFIDENTIAL INFORMATION OF CITY

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

26. NOTICES TO THE PARTIES

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To City: **[insert name or title of department contact person, name of department, mailing address, e-mail address and fax number]**

To Contractor: **[insert name of contractor, mailing address, e-mail address and fax number]**

Any notice of default must be sent by registered mail.

27. WORKS FOR HIRE

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams,

surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. AUDIT AND INSPECTION OF RECORDS

28.1. Records. Contractor shall maintain all Records in accordance with generally accepted accounting principles. All Records shall be maintained throughout the term of this Agreement at Contractor's San Francisco office and shall be maintained for five years following termination or expiration of this Agreement in a safe and secure location within the San Francisco Bay Area.

28.2. City's Right to Inspect and Copy. Any duly authorized agent of City shall have the right to examine and/or copy all Records at any time during normal business hours, provided that Contractor shall be allowed at least 48 hours after City identifies Records it wishes to copy to mark any such Records as confidential or proprietary. Records created or maintained in an electronic format shall be available to the City and its agents for examination and/or copying in an electronic format.

28.3. Audits. Contractor will cooperate fully with the performance by City or its agents of Contract Performance and Operations Audits. A Contract Performance Audit may examine any and all aspects of the Contractor's obligations under this Agreement. An Operations Audit may examine the quality and effectiveness of Contractor's organizational Structure, internal controls, financial reporting and business practices. City may require each type of audit no more than once per calendar year. City shall provide Contractor with 15 Days' notice of any audit to be performed under this Section. The State of California or any federal agency having an interest in the subject matter of this Agreement will have the same rights conferred upon City by this Section.

28.4. Findings of Nonperformance. In the event that any audit conducted pursuant to Section 11 results in a determination that Contractor has failed to perform any material term of this Agreement, City will issue a written Finding of Nonperformance to Contractor. Such Finding of Nonperformance will include a calculation of liquidated damages for Contractor's failure to perform, using the measure of Liquidated Damages specified in Section 30. The Finding of Nonperformance shall also include a reasonable period of time for Contractor to cure any listed performance failures that are subject to liquidated damages pursuant to Sections 20.1.2 and 20.1.3. Contractor's failure to cure may result in a notice of default pursuant to Section 16. Liquidated damages may not be assessed in a Finding of Nonperformance for any incident for which liquidated damages have already been assessed pursuant to Section 14. Any failure of City to list any violation of the terms of this Agreement in the Finding of Nonperformance shall not constitute a waiver of the City's right to impose any other right or remedy that it has under this Agreement or applicable law with respect to that violation.

29. SUBCONTRACTING

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

30. ASSIGNMENT

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved as required by law.

31. NON-WAIVER OF RIGHTS

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

32. NONDISCRIMINATION; PENALTIES

32.1. Contractor Shall Not Discriminate

In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

32.2. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

33. DRUG-FREE WORKPLACE POLICY

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

34. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

35. SUNSHINE ORDINANCE

In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

36. LIMITATIONS ON CONTRIBUTIONS

Through execution of this Agreement, Contractor acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

37. REQUIRING MINIMUM COMPENSATION FOR COVERED EMPLOYEES

37.1. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

37.2. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

37.3. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

37.4. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

37.5. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

37.6. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

37.7. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

37.8. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

37.9. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

38. REQUIRING HEALTH BENEFITS FOR COVERED EMPLOYEES

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

38.1. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

38.2. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

38.3. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

38.4. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

38.5. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

38.6. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

38.7. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

38.8. Contractor shall keep itself informed of the current requirements of the HCAO.

38.9. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

38.10. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

38.11. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

38.12. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

38.13. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

39. PROHIBITION ON POLITICAL ACTIVITY WITH CITY FUNDS

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this Section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this Section.

40. PRESERVATIVE-TREATED WOOD CONTAINING ARSENIC

Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

41. MODIFICATION OF AGREEMENT

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved as required by law.

42. ADMINISTRATIVE REMEDY FOR AGREEMENT INTERPRETATION

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

43. AGREEMENT MADE IN CALIFORNIA; VENUE

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

44. CONSTRUCTION

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

45. ENTIRE AGREEMENT

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section **46**.

46. COMPLIANCE WITH LAWS

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

47. SERVICES PROVIDED BY ATTORNEYS

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

48. SEVERABILITY

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

49. PROTECTION OF PRIVATE INFORMATION

Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 21 of the Administrative Code, or debar the Contractor.

50. GRAFFITI REMOVAL

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within 48 hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This Section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property.

Any failure of Contractor to comply with this Section of this Agreement shall constitute an Event of Default of this Agreement.

51. FOOD SERVICE WASTE REDUCTION REQUIREMENTS

Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of \$100 liquidated damages for the first breach, \$200 liquidated damages for the second breach in the same year, and \$500 liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

52. NO THIRD PARTY BENEFICIARIES

Except as expressly provided herein, this Agreement is for the benefit of the signatories to the Agreement only and no other person or entity shall be entitled to rely on, receive any benefit from, or enforce against either party any provision of this Agreement.

53. DISPUTES

Disputes arising in the performance of this Agreement that are not resolved by agreement of the parties will be decided in writing by the Chief Financial Officer of the SFMTA. The decision will be administratively final and conclusive unless, within 10 Days from the date of such decision, the Contractor mails or otherwise delivers a written appeal to the Director. Any appeal must contain the following: (a) a statement of the Contractor's position, (b) a summary of the arguments supporting that position, and (c) any evidence supporting the Contractor's position. The decision of the Director will be administratively final and conclusive. Pending final resolution of a dispute hereunder, the Contractor must proceed diligently with the performance of its obligations under the Agreement. Under no circumstances may the Contractor or its subcontractors stop work due to an unresolved dispute. An alternative dispute resolution process may be used in lieu of the procedures set forth in this Section 53 if the City and contractor agree to such alternative procedures.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

<p>CITY</p> <p>By: _____</p> <p>NATHANIEL P. FORD Executive Director/CEO San Francisco Municipal Transportation Agency</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____</p> <p>CHRISTIANE HAYASHI Deputy City Attorney</p>	<p>CONTRACTOR</p> <p>[company name]</p> <p>By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.</p> <p>_____</p> <p>[name of authorized representative] [title] [address] [city, state, ZIP]</p> <p>City vendor number: [vendor number]</p>
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Exhibits

- A. Fleet Inventory Report
- B. Reporting Formats
 - Access Restrictions
 - Maintenance Plan and Schedule

APPENDIX F

ATTESTATION OF COMPLIANCE

To be completed by all Proposing Firms and All Individual Subcontractors

(Please check each box, sign this form and submit it with your response.)

Name of Individual Completing this Form: _____

The Form is Submitted on Behalf of Firm: _____

Name of RFP: **SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY, REQUEST FOR PROPOSALS FOR ADVERTISING ON SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY PROPERTY**

1. I attest that I and all members of the firm listed above will and have complied to date with Section VI (O) of the above RFP. ☐ Yes
2. I understand that if my firm or any members of the firm listed above are found to be in violation of Section VI (O) of the above RFP, this will disqualify my firm and any Proposal in which my firm is named from further consideration. ☐ Yes

I have entered required responses to the above questions to the best of my knowledge and belief.

Signature: _____

Date _____

APPENDIX G

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

(1) By signing and submitting its Proposal, the Proposer or proposed subcontractor certifies as follows:

(Proposer or Proposed Subcontractor Business Name)

certifies to the best of its knowledge and belief that it and its principals:

- a. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from contracting with any federal, state or local governmental department or agency;
 - b. Have not within a three-year period preceding the date of this Proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses enumerated in paragraph (1) b. of this certification; and
 - d. Have not within a three-year period preceding the date of this Proposal had one or more public contracts (Federal, state, or local) terminated for cause or default.
- (2) Where the firm executing this RFP Appendix G is unable to certify to any of the statements in this certification, such firm shall attach a detailed explanation of facts that prevent such certification.
- (3) The certification in this clause is a material representation on fact relied upon by the San Francisco Municipal Transportation Agency (SFMTA).

As the authorized certifying official, I hereby certify that the above-specified certifications are true.

Business Name: _____

Authorized Representative Name (print)

Authorized Representative Title (print)

Authorized Representative Signature

Date

APPENDIX H

CERTIFICATION REGARDING LOBBYING

(Proposer or Proposed Subcontractor Business Name)

certifies that it will not and has not paid any person or organization for influencing or attempting to influence a member of the San Francisco Board of Supervisors or the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors, or an officer or employee of the City and County of San Francisco in connection with the contract to be awarded pursuant to this Request for Proposals, except as expressly authorized in this Request for Proposals. The Proposer or proposed subcontractor submitting this certification shall also disclose the name of any lobbyist registered under Article II of the San Francisco Campaign and Governmental Conduct Code who has made lobbying contacts on its behalf with respect to the contract to be awarded pursuant to this Request for Proposals.

This certification is a material representation of fact upon which reliance was placed for the purposes of the City's evaluation of Proposals and award of a contract pursuant to the Request for Proposals. Submission of this certification is a prerequisite for submitting a Proposal responsive to the Request for Proposals.

Following submission of Proposals with this signed certification, any firm who 1) pays any person or organization for influencing or attempting to influence a member of the San Francisco Board of Supervisors or the SFMTA Board of Directors, or an officer or employee of the City and County of San Francisco in connection with the contract to be awarded pursuant to this Request for Proposals, except as expressly authorized in the RFP, 2) fails to disclose the name of any lobbyist registered under Article II of the San Francisco Campaign and Governmental Conduct Code who has made lobbying contacts on its behalf with respect to the contract to be awarded pursuant to this Request for Proposals, or 3) pays or agrees to pay to any City employee or official or to any member of the selection panel or other person involved in the making of the contract on behalf of the SFMTA any fee or commission, or any other thing of value contingent on the award of a contract, will disqualify any Proposal in which that firm is named as a prime contractor, joint venture partner or subcontractor from the selection process.

By signing and submitting its proposal, the Proposer or proposed subcontractor also certifies to the SFMTA that the Proposer or proposed subcontractor has not paid, nor agreed to pay, and will not pay or agree to pay, any fee or commission, or any other thing of value contingent on the award of a contract to any City employee or official or to any member of the selection panel or other person involved in the making of the contract on behalf of the SFMTA.

As the authorized certifying official, I hereby certify that the above-specified certifications are true.

Business Name: _____

Authorized Representative Name (print)

Authorized Representative Title (print)

Authorized Representative Signature

Date

Enclosure 3—List of Potential Bidders

CBS Outdoor

Stephen Shinn
Vice President
CBS Outdoor
865 Battery Street, 3rd Floor
San Francisco, CA 94111
Phone: (415) 402-6863
Fax: (415) 693-0824
Email: Steve.Shinn@CBSOutdoor.com

Cemusa

Toulla Constantinou
Chief Executive Officer, North America
Cemusa
420 Lexington Avenue, Suite 2533
New York, NY 10170
Phone: (646) 312-8528
Fax: (212) 599-7999
Email: tconstantinou@cemusainc.com

Clear Channel

Bill Hooper
President/General Manager
Northern California Region
Clear Channel Outdoor
555 12th Street, Suite 950
Oakland, CA 94607
Phone: (510) 835-5900
Fax: (510) 834-9410
Email: billhooper@clearchannel.com

JCDecaux

Francois Nion
Executive Vice President
JCDecaux
1000 Quesada Avenue
San Francisco, CA 94124
Phone: (415) 671-1250
Fax: (415) 671-1254
Email: Francois.Nion@jcdecauxna.com

KEM Outdoor

Marquis LaFortune
KEM Outdoor, Inc.
PO Box 461406
San Antonio, TX 78246-1406
Phone: (210) 675-6444
Fax: (210) 675-6691
Email: marquis.lafortune@swbell.net

Titan Outdoor

Don Allman
Titan Outdoor
850 Third Avenue
New York, NY 10022
Phone: (212) 644-6200
Email: Don.Allman@titanoutdoor.com

Abuzz Technologies

Business Development
316 Abercrombie Street
Darlington NSW 2008
Sydney
Australia
Website: www.abuzz.com.au

Kiosk Information Systems

Steven M. Jeziorski
Kiosk Information Systems
346 South Arthur Avenue
Louisville, CO 80027
Phone: (303) 661-1695
Fax: (303) 466-6730
Email: info@kis-kiosk.com
Website: www.kiosk.com

Quad Media

539 Randolph Avenue
Pulaski, Virginia 24301
Phone: (540) 980-8309
Fax: (540) 980-0707
Email: blafleur@quadmedia.com
Website: www.quadmedia.com

ICE Tech

Ash House
Fairfield Avenue
Staines
Middlesex, TW18 4AN
England
Email: sales@icetech.ie
Website: www.icetech.ie

King Products

5696 Ambler Drive
Mississauga, Ontario
Canada L4W 2K9
Phone: (800) 661-5464
E-mail: sales@kingproducts.com
Website: www.kingproducts.com

SeePoint, Inc.

2619 Manhattan Beach Blvd.
Redondo Beach, CA 90278
Phone: (888) 587-1777
E-Mail: info@seepoint.com

IKS Technologies, Inc.

1074 Walker Street
Cypress, CA 90630
Phone: (714) 763-4400
Email: info@ikskiosks.com

SCALA, Inc.

350 Eagleview Blvd., Suite 150
Exton, PA 19341
Phone: (610) 561-9724
Email: Christopher.broad@scala.com
Website: www.scala.com

Cisco Systems, Inc.

Mark Richard
Cisco Systems, Inc.
201 Third Street, Suite 620
San Francisco, CA 94103
Phone: (415) 371-2383
Email: markrich@cisco.com

Rodman Consulting, LLC

Caroline Alain Rodman
Rodman Consulting, LLC
280 Fell Street, Suite 402
San Francisco, CA 94102
Cell: (415) 218-1618
Email: caroline@rodmanconsulting.com

IBM

Douglas Naschke
IBM
2710 Gateway Oaks Drive, # 200S
Sacramento, California 95833-4307
Phone: (916) 920-6046
Fax: (916) 641-4030
Email: naschke@us.ibm.com

Google

Tom Sly
Google
345 Spear Street, 4th Floor
San Francisco, CA 94105
Cell: (415) 504-3553
Email: tomsly@google.com

Lamar Advertising

York Haines
Lamar Advertising
Director of Transit & Development
3030 SW Moody Street, Suite 270
Portland, Oregon 97201
Phone: (503) 223-9796
Fax: (503) 223-8779
Email: yhaines@lamar.com

Jonathan Kaufman
Solem & Associates
One Daniel Burnham Court, Suite 100-C
San Francisco, CA 94109
Phone: (415) 296-2019
Fax: (415) 788-7858
Email: jonk@solem.com

Big Think Studios

1426 18th Street
San Francisco, CA 94107
Phone: (415) 934-1111
Fax: (415) 934-1114
Email: colleen@bigthinkstudios.com

Jungle Communications Inc.

1750 Montgomery Street, Suite 1108
San Francisco, CA 94111
Phone: (415) 584-8844
Fax: (415) 584-4427
Email: info@webjungle.com

KC Communications

610 Leavenworth Street, #303
San Francisco, CA 94109
Phone: (415) 447-8530
Fax: (415) 447-8530
Email: kim@kccommunications.net

O'Rourke Inc.

55 Hawthorne Street, Suite 430
San Francisco, CA 94105
Phone: (415) 543-9119
Fax: (415) 543-0566
Email: andrew@ororkepr.com

Oneworld Communications

2001 Harrison Street
San Francisco, CA 94110
Phone: (415) 355-1935
Fax: (415) 355-0295
Email: jonathan.villet@owcom.com

Polaris Research & Development, Inc.

390 4th Street
San Francisco, CA 94107
Phone: (415) 777-3229
Fax: (415) 512-9625
Email: ernie@polarisinc.com

Small Business Exchange

P.O. Box 190668
San Francisco, CA 94119-0668
Phone: (415) 778-6250
Fax: (415) 778-6255
Email: sbe@sbeinc.com

The Johnson Agency

1550 California Street, Suite 6-262
San Francisco, CA 94109
Phone: (415) 294-7798
Fax: (415) 294-7798

The M-Line

27 South Park, Suite 201
San Francisco, CA 94107
Phone: (415) 777-4433
Fax: (415) 777-1221
Email: mya@the-m-line.com

Traction Corporation

1349 Larkin Street
San Francisco, CA 94109
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